

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1199

FINAL READING

Introduced by Bourne, 8; Aguilar, 35; Combs, 32; Connealy, 16;
Erdman, 47; Flood, 19; Foley, 29; Friend, 10; Howard,
9; Dw. Pedersen, 39; Stuthman, 22; Synowiecki, 7; at
the request of the Governor

Read first time January 18, 2006

Committee: Judiciary

A BILL

1 FOR AN ACT relating to sex offenses; to amend sections 28-319,
2 29-2028, 29-2221, 42-1203, 71-1,206.14, 71-1,206.18,
3 71-1,206.34, 71-6908, 79-267, 83-1,100, and 83-1,103,
4 Reissue Revised Statutes of Nebraska, sections 28-101,
5 28-111, 28-311, 28-318, 28-320.01, 28-320.02, 28-707,
6 29-119, 29-1926, 29-2290, 29-2923, 29-4001, 29-4005,
7 29-4006, 29-4007, 29-4011, 29-4103, 71-916, 71-917,
8 71-918, 71-919, 71-942, 71-944, 71-945, 71-946, 71-947,
9 71-948, 71-949, 71-954, 71-956, 71-957, 71-958, 71-959,
10 71-960, 71-961, 71-962, 80-601, 81-1850, 83-338, 83-351,
11 83-364, 83-376, and 83-933, Revised Statutes Cumulative

1 Supplement, 2004, and sections 29-110, 29-4003, 29-4004,
2 29-4009, 29-4013, 71-1128, 83-1,102, 83-1,135, and
3 83-4,143, Revised Statutes Supplement, 2005; to create
4 the offenses of sexual assault of a child in the first,
5 second, and third degrees; to provide penalties; to
6 change provisions relating to sex offenses and the
7 Sex Offender Registration Act; to adopt the Sexual
8 Predator Residency Restriction Act and the Sex Offender
9 Commitment Act; to provide duties for authorities with
10 respect to the release of certain sex offenders; to
11 provide for lifetime community supervision of certain
12 sex offenders as prescribed; to provide duties for the
13 Office of Parole Administration and parole officers; to
14 change provisions relating to the Nebraska Treatment and
15 Corrections Act; to provide duties for sentencing courts;
16 to establish a working group; to provide a termination
17 date; to harmonize provisions; and to repeal the original
18 sections.

19 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative
2 Supplement, 2004, is amended to read:

3 28-101 Sections 28-101 to 28-1350 and section 6 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. Section 28-111, Revised Statutes Cumulative
6 Supplement, 2004, is amended to read:

7 28-111 Any person who commits one or more of the
8 following criminal offenses against a person or a person's
9 property because of the person's race, color, religion, ancestry,
10 national origin, gender, sexual orientation, age, or disability
11 or because of the person's association with a person of a
12 certain race, color, religion, ancestry, national origin, gender,
13 sexual orientation, age, or disability shall be punished by the
14 imposition of the next higher penalty classification than the
15 penalty classification prescribed for the criminal offense, unless
16 such criminal offense is already punishable as a Class IB felony
17 or higher classification: Manslaughter, section 28-305; assault
18 in the first degree, section 28-308; assault in the second
19 degree, section 28-309; assault in the third degree, section
20 28-310; terroristic threats, section 28-311.01; stalking, section
21 28-311.03; kidnapping, section 28-313; false imprisonment in the
22 first degree, section 28-314; false imprisonment in the second
23 degree, section 28-315; sexual assault in the first degree,
24 section 28-319; sexual assault in the second or third degree,
25 section 28-320; sexual assault of a child, section 28-320.01 and

1 section 6 of this act; arson in the first degree, section 28-502;
2 arson in the second degree, section 28-503; arson in the third
3 degree, section 28-504; criminal mischief, section 28-519; criminal
4 trespass in the first degree, section 28-520; or criminal trespass
5 in the second degree, section 28-521.

6 Sec. 3. Section 28-311, Revised Statutes Cumulative
7 Supplement, 2004, is amended to read:

8 28-311 (1) No person, by any means and without privilege
9 to do so, shall knowingly solicit, coax, entice, or lure any child
10 under the age of fourteen years to enter into any vehicle, whether
11 or not the person knows the age of the child, if:

12 (a) The person does not have the express or implied
13 permission of the parent, guardian, or other legal custodian of the
14 child in undertaking the activity; and

15 (b)(i) The person is not a law enforcement officer,
16 emergency services provider as defined in section 71-507,
17 firefighter, or other person who regularly provides emergency
18 services, is not the operator of a bookmobile or other such vehicle
19 operated by the state or a political subdivision and used for
20 informing, educating, organizing, or transporting children, is not
21 a paid employee of, or a volunteer for, a nonprofit or religious
22 organization which provides activities for children, and is not an
23 employee or agent of or a volunteer acting under the direction of
24 any board of education or (ii) the person is a person listed in
25 subdivision (1)(b)(i) of this section but, at the time the person

1 undertakes the activity, he or she is not acting within the scope
2 of his or her lawful duties in that capacity.

3 (2) It is an affirmative defense to a charge under this
4 section that the person undertook the activity in response to a
5 bona fide emergency situation or that the person undertook the
6 activity in response to a reasonable belief that it was necessary
7 to preserve the health, safety, or welfare of the child.

8 (3) Any person who violates this section commits criminal
9 child enticement and is guilty of a Class I misdemeanor. If
10 such person has previously been convicted of (a) criminal child
11 enticement under this section, (b) sexual assault of a child in the
12 first degree under section 6 of this act, (c) sexual assault of
13 a child in the second or third degree under section 28-320.01, or
14 ~~(e)~~ (d) assault under section 28-308, 28-309, or 28-310, kidnapping
15 under section 28-313, or false imprisonment under section 28-314 or
16 28-315 when the victim was under eighteen years of age when such
17 person violates this section, such person is guilty of a Class IV
18 felony.

19 Sec. 4. Section 28-318, Revised Statutes Cumulative
20 Supplement, 2004, is amended to read:

21 28-318 As used in sections 28-317 to 28-321 and section 6
22 of this act, unless the context otherwise requires:

23 (1) Actor means a person accused of sexual assault;

24 (2) Intimate parts means the genital area, groin, inner
25 thighs, buttocks, or breasts;

1 (3) Past sexual behavior means sexual behavior other than
2 the sexual behavior upon which the sexual assault is alleged;

3 (4) Serious personal injury means great bodily injury or
4 disfigurement, extreme mental anguish or mental trauma, pregnancy,
5 disease, or loss or impairment of a sexual or reproductive organ;

6 (5) Sexual contact means the intentional touching of the
7 victim's sexual or intimate parts or the intentional touching of
8 the victim's clothing covering the immediate area of the victim's
9 sexual or intimate parts. Sexual contact shall also mean the
10 touching by the victim of the actor's sexual or intimate parts or
11 the clothing covering the immediate area of the actor's sexual or
12 intimate parts when such touching is intentionally caused by the
13 actor. Sexual contact shall include only such conduct which can be
14 reasonably construed as being for the purpose of sexual arousal or
15 gratification of either party. Sexual contact shall also include
16 the touching of a child with the actor's sexual or intimate parts
17 on any part of the child's body for purposes of sexual assault of a
18 child under section 28-320.01 and section 6 of this act;

19 (6) Sexual penetration means sexual intercourse in its
20 ordinary meaning, cunnilingus, fellatio, anal intercourse, or any
21 intrusion, however slight, of any part of the actor's or victim's
22 body or any object manipulated by the actor into the genital
23 or anal openings of the victim's body which can be reasonably
24 construed as being for nonmedical or nonhealth purposes. Sexual
25 penetration shall not require emission of semen;

1 (7) Victim means the person alleging to have been
2 sexually assaulted;

3 (8) Without consent means:

4 (a) (i) The victim was compelled to submit due to the
5 use of force or threat of force or coercion, or (ii) the victim
6 expressed a lack of consent through words, or (iii) the victim
7 expressed a lack of consent through conduct, or (iv) the consent,
8 if any was actually given, was the result of the actor's deception
9 as to the identity of the actor or the nature or purpose of the act
10 on the part of the actor;

11 (b) The victim need only resist, either verbally or
12 physically, so as to make the victim's refusal to consent genuine
13 and real and so as to reasonably make known to the actor the
14 victim's refusal to consent; and

15 (c) A victim need not resist verbally or physically where
16 it would be useless or futile to do so; and

17 (9) Force or threat of force means (a) the use of
18 physical force which overcomes the victim's resistance or (b) the
19 threat of physical force, express or implied, against the victim or
20 a third person that places the victim in fear of death or in fear
21 of serious personal injury to the victim or a third person where
22 the victim reasonably believes that the actor has the present or
23 future ability to execute the threat.

24 Sec. 5. Section 28-319, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 28-319 (1) Any person who subjects another person to
2 sexual penetration (a) without the consent of the victim, ~~or~~ (b)
3 who knew or should have known that the victim was mentally or
4 physically incapable of resisting or appraising the nature of his
5 or her conduct, or (c) when the actor is nineteen years of age or
6 older and the victim is at least twelve but less than sixteen years
7 of age is guilty of sexual assault in the first degree.

8 (2) Sexual assault in the first degree is a Class II
9 felony. The sentencing judge shall consider whether the actor
10 caused serious personal injury to the victim in reaching a decision
11 on the sentence.

12 (3) Any person who is found guilty of sexual assault in
13 the first degree for a second time when the first conviction was
14 pursuant to this section or any other state or federal law with
15 essentially the same elements as this section shall be sentenced
16 to ~~not less than~~ a mandatory minimum term of twenty-five years and
17 ~~shall not be eligible for parole in prison.~~

18 Sec. 6. (1) A person commits sexual assault of a child
19 in the first degree if he or she subjects another person under
20 twelve years of age to sexual penetration and the actor is at least
21 nineteen years of age or older.

22 (2) Sexual assault of a child in the first degree is a
23 Class IB felony with a mandatory minimum sentence of fifteen years
24 in prison for the first offense.

25 (3) Any person who is found guilty of sexual assault of a

1 child in the first degree under this section and who has previously
2 been convicted (a) under this section, (b) under section 28-319 of
3 first degree or attempted first degree sexual assault, (c) under
4 section 28-320.01 before the effective date of this act of sexual
5 assault of a child or attempted sexual assault of a child, (d)
6 under section 28-320.01 on or after the effective date of this
7 act of sexual assault of a child in the second or third degree
8 or attempted sexual assault of a child in the second or third
9 degree, or (e) in any other state or federal court under laws with
10 essentially the same elements as this section, section 28-319, or
11 section 28-320.01 as it existed before, on, or after the effective
12 date of this act shall be guilty of a Class IB felony with a
13 mandatory minimum sentence of twenty-five years in prison.

14 Sec. 7. Section 28-320.01, Revised Statutes Cumulative
15 Supplement, 2004, is amended to read:

16 28-320.01 (1) A person commits sexual assault of a child
17 in the second or third degree if he or she subjects another person
18 fourteen years of age or younger to sexual contact and the actor is
19 at least nineteen years of age or older.

20 (2) Sexual assault of a child is in the second degree
21 if the actor causes serious personal injury to the victim. Sexual
22 assault of a child in the second degree is a Class II felony for
23 the first offense.

24 (3) Sexual assault of a child is in the third degree if
25 the actor does not cause serious personal injury to the victim.

1 Sexual assault of a child in the third degree is a Class IIIA
2 felony for the first offense.

3 ~~(3)~~ (4) Any person who is found guilty of second degree
4 sexual assault of a child under this section and who has previously
5 been convicted (a) under this section, (b) under section 28-319
6 of first degree or attempted first degree sexual assault, ~~or~~ (c)
7 under section 6 of this act for first degree or attempted first
8 degree sexual assault of a child, or (d) in any other state or
9 federal court under laws with essentially the same elements as
10 this section, ~~or~~ section 28-319, or section 6 of this act shall be
11 guilty of a Class IC felony and shall be sentenced to a mandatory
12 minimum term of twenty-five years in prison.

13 (5) Any person who is found guilty of third degree sexual
14 assault of a child under this section and who has previously been
15 convicted (a) under this section, (b) under section 28-319 of first
16 degree or attempted first degree sexual assault, (c) under section
17 6 of this act for first degree or attempted first degree sexual
18 assault of a child, or (d) in any other state or federal court
19 under laws with essentially the same elements as this section,
20 section 28-319, or section 6 of this act shall be guilty of a Class
21 IC felony.

22 Sec. 8. Section 28-320.02, Revised Statutes Cumulative
23 Supplement, 2004, is amended to read:

24 28-320.02 (1) No person shall knowingly solicit, coax,
25 entice, or lure (a) a child sixteen years of age or younger or

1 (b) a peace officer who is believed by such person to be a child
2 sixteen years of age or younger, by means of a computer as that
3 term is defined in section 28-1343, to engage in an act which would
4 be in violation of section 28-319 or 28-320.01 or section 6 of this
5 act or subsection (1) or (2) of section 28-320. A person shall not
6 be convicted of both a violation of this subsection and a violation
7 of section 28-319 or ~~section~~ 28-320.01 or section 6 of this act or
8 subsection (1) or (2) of section 28-320 if the violations arise out
9 of the same set of facts or pattern of conduct and the individual
10 solicited, coaxed, enticed, or lured under this subsection is also
11 the victim of the sexual assault under section 28-319 or ~~section~~
12 28-320.01 or section 6 of this act or subsection (1) or (2) of
13 section 28-320.

14 (2) A person who violates this section is guilty of
15 a Class IIIA felony. If a person who violates this section has
16 previously been convicted of a violation of this section or section
17 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, or
18 28-320.01 or section 6 of this act or subsection (1) or (2) of
19 section 28-320, the person is guilty of a Class III felony.

20 Sec. 9. Section 28-707, Revised Statutes Cumulative
21 Supplement, 2004, is amended to read:

22 28-707 (1) A person commits child abuse if he or she
23 knowingly, intentionally, or negligently causes or permits a minor
24 child to be:

25 (a) Placed in a situation that endangers his or her life

1 or physical or mental health;

2 (b) Cruelly confined or cruelly punished;

3 (c) Deprived of necessary food, clothing, shelter, or
4 care;

5 (d) Placed in a situation to be sexually exploited by
6 allowing, encouraging, or forcing such minor child to solicit for
7 or engage in prostitution, debauchery, public indecency, or obscene
8 or pornographic photography, films, or depictions; or

9 (e) Placed in a situation to be sexually abused as
10 defined in section 28-319 or 28-320.01 or section 6 of this act.

11 (2) The statutory privilege between patient and
12 physician, between client and professional counselor, and between
13 husband and wife shall not be available for excluding or refusing
14 testimony in any prosecution for a violation of this section.

15 (3) Child abuse is a Class I misdemeanor if the offense
16 is committed negligently.

17 (4) Child abuse is a Class IIIA felony if the offense
18 is committed knowingly and intentionally and does not result in
19 serious bodily injury as defined in section 28-109.

20 (5) Child abuse is a Class III felony if the offense is
21 committed knowingly and intentionally and results in serious bodily
22 injury as defined in such section.

23 (6) Child abuse is a Class IB felony if the offense is
24 committed knowingly and intentionally and results in the death of
25 such child.

1 Sec. 10. Section 29-110, Revised Statutes Supplement,
2 2005, is amended to read:

3 29-110 (1) Except as otherwise provided by law, no person
4 shall be prosecuted for any felony unless the indictment is found
5 by a grand jury within three years next after the offense has
6 been done or committed or unless a complaint for the same is filed
7 before the magistrate within three years next after the offense
8 has been done or committed and a warrant for the arrest of the
9 defendant has been issued.

10 (2) Except as otherwise provided by law, no person shall
11 be prosecuted, tried, or punished for any misdemeanor or other
12 indictable offense below the grade of felony or for any fine or
13 forfeiture under any penal statute unless the suit, information,
14 or indictment for such offense is instituted or found within one
15 year and six months from the time of committing the offense or
16 incurring the fine or forfeiture or within one year for any offense
17 the punishment of which is restricted by a fine not exceeding one
18 hundred dollars and to imprisonment not exceeding three months.

19 (3) Except as otherwise provided by law, no person
20 shall be prosecuted for kidnapping under section 28-313, false
21 imprisonment under section 28-314 or 28-315, child abuse under
22 section 28-707, pandering under section 28-802, debauching a
23 minor under section 28-805, or an offense under section 28-813,
24 28-813.01, or 28-1463.03 when the victim is under sixteen years of
25 age at the time of the offense (a) unless the indictment for such

1 offense is found by a grand jury within seven years next after the
2 offense has been committed or within seven years next after the
3 victim's sixteenth birthday, whichever is later, or (b) unless a
4 complaint for such offense is filed before the magistrate within
5 seven years next after the offense has been committed or within
6 seven years next after the victim's sixteenth birthday, whichever
7 is later, and a warrant for the arrest of the defendant has been
8 issued.

9 (4) No person shall be prosecuted for a violation of
10 the Securities Act of Nebraska under section 8-1117 unless the
11 indictment for such offense is found by a grand jury within five
12 years next after the offense has been done or committed or unless
13 a complaint for such offense is filed before the magistrate within
14 five years next after the offense has been done or committed and a
15 warrant for the arrest of the defendant has been issued.

16 (5) There shall not be any time limitations for
17 prosecution or punishment for treason, murder, arson, forgery,
18 sexual assault in the first or second degree under section 28-319
19 or 28-320, ~~or~~ sexual assault of a child in the second or third
20 degree under section 28-320.01, or sexual assault of a child in the
21 first degree under section 6 of this act; nor shall there be any
22 time limitations for prosecution or punishment for sexual assault
23 in the third degree under section 28-320 when the victim is under
24 sixteen years of age at the time of the offense.

25 (6) The time limitations prescribed in this section shall

1 include all inchoate offenses pursuant to the Nebraska Criminal
2 Code and compounding a felony pursuant to section 28-301.

3 (7) The time limitations prescribed in this section shall
4 not extend to any person fleeing from justice.

5 (8) When any suit, information, or indictment for any
6 crime or misdemeanor is limited by any statute to be brought or
7 exhibited within any other time than is limited by this section,
8 then the suit, information, or indictment shall be brought or
9 exhibited within the time limited by such statute.

10 (9) If any suit, information, or indictment is quashed or
11 the proceedings set aside or reversed on writ of error, the time
12 during the pendency of such suit, information, or indictment so
13 quashed, set aside, or reversed shall not be reckoned within this
14 statute so as to bar any new suit, information, or indictment for
15 the same offense.

16 (10) The changes made to this section by Laws 2004, LB
17 943, shall apply to offenses committed prior to April 16, 2004, for
18 which the statute of limitations has not expired as of such date
19 and to offenses committed on or after such date.

20 (11) The changes made to this section by Laws 2005, LB
21 713, shall apply to offenses committed prior to September 4, 2005,
22 for which the statute of limitations has not expired as of such
23 date and to offenses committed on or after such date.

24 Sec. 11. Section 29-119, Revised Statutes Cumulative
25 Supplement, 2004, is amended to read:

1 29-119 For purposes of this section and sections 23-1201,
2 29-120, and 29-2261, unless the context otherwise requires:

3 (1) A plea agreement means that as a result of a
4 discussion between the defense counsel and the prosecuting
5 attorney:

6 (a) A charge is to be dismissed or reduced; or

7 (b) A defendant, if he or she pleads guilty to a charge,
8 may receive less than the maximum penalty permitted by law; and

9 (2) Victim means a person who, as a result of a homicide
10 as defined in sections 28-302 to 28-306, a first degree sexual
11 assault as defined in section 28-319, a first degree assault as
12 defined in section 28-308, a sexual assault of a child in the
13 second or third degree as defined in section 28-320.01, a sexual
14 assault of a child in the first degree as defined in section 6 of
15 this act, a second degree assault as defined in section 28-309,
16 a first degree false imprisonment as defined in section 28-314,
17 a second degree sexual assault as defined in section 28-320,
18 or a robbery as defined in section 28-324, has had a personal
19 confrontation with the offender and also includes a person who has
20 suffered serious bodily injury as defined in section 28-109 as a
21 result of a motor vehicle accident when the driver was charged with
22 a violation of section 60-6,196 or 60-6,197 or with a violation
23 of a city or village ordinance enacted in conformance with either
24 section. In the case of a homicide, victim means the nearest
25 surviving relative under the law as provided by section 30-2303 but

1 does not include the alleged perpetrator of the homicide. In the
2 case of a sexual assault of a child, victim means the child victim
3 and the parents, guardians, or duly appointed legal representative
4 of the child victim but does not include the alleged perpetrator of
5 the sexual assault.

6 Sec. 12. Section 29-1926, Revised Statutes Cumulative
7 Supplement, 2004, is amended to read:

8 29-1926 (1) (a) Upon request of the prosecuting or defense
9 attorney and upon a showing of compelling need, the court shall
10 order the taking of a videotape deposition of a child victim of or
11 child witness to any offense punishable as a felony. The deposition
12 ordinarily shall be in lieu of courtroom or in camera testimony by
13 the child. If the court orders a videotape deposition, the court
14 shall:

15 (i) Designate the time and place for taking the
16 deposition. The deposition may be conducted in the courtroom, the
17 judge's chambers, or any other location suitable for videotaping;

18 (ii) Assure adequate time for the defense attorney to
19 complete discovery before taking the deposition; and

20 (iii) Preside over the taking of the videotape deposition
21 in the same manner as if the child were called as a witness for the
22 prosecution during the course of the trial.

23 (b) Unless otherwise required by the court, the
24 deposition shall be conducted in the presence of the prosecuting
25 attorney, the defense attorney, the defendant, and any other person

1 deemed necessary by the court, including the parent or guardian of
2 the child victim or child witness or a counselor or other person
3 with whom the child is familiar. Such parent, guardian, counselor,
4 or other person shall be allowed to sit with or near the child
5 unless the court determines that such person would be disruptive
6 to the child's testimony.

7 (c) At any time subsequent to the taking of the original
8 videotape deposition and upon sufficient cause shown, the court
9 shall order the taking of additional videotape depositions to be
10 admitted at the time of the trial.

11 (d) If the child testifies at trial in person rather than
12 by videotape deposition, the taking of the child's testimony may,
13 upon request of the prosecuting attorney and upon a showing of
14 compelling need, be conducted in camera.

15 (e) Unless otherwise required by the court, the child
16 shall testify in the presence of the prosecuting attorney, the
17 defense attorney, the defendant, and any other person deemed
18 necessary by the court, including the parent or guardian of the
19 child victim or child witness or a counselor or other person with
20 whom the child is familiar. Such parent, guardian, counselor, or
21 other person shall be allowed to sit with or near the child unless
22 the court determines that such person would be disruptive to the
23 child's testimony. Unless waived by the defendant, all persons in
24 the room shall be visible on camera except the camera operator.

25 (f) If deemed necessary to preserve the constitutionality

1 of the child's testimony, the court may direct that during the
2 testimony the child shall at all times be in a position to see the
3 defendant live or on camera.

4 (g) For purposes of this section, child shall mean a
5 person eleven years of age or younger at the time the motion to
6 take the deposition is made or at the time of the taking of in
7 camera testimony at trial.

8 (h) Nothing in this section shall restrict the court
9 from conducting the pretrial deposition or in camera proceedings
10 in any manner deemed likely to facilitate and preserve a child's
11 testimony to the fullest extent possible, consistent with the
12 right to confrontation guaranteed in the Sixth Amendment of the
13 Constitution of the United States and Article I, section 11,
14 of the Nebraska Constitution. In deciding whether there is a
15 compelling need that child testimony accommodation is required by
16 pretrial videotape deposition, in camera live testimony, in camera
17 videotape testimony, or any other accommodation, the court shall
18 make particularized findings on the record of:

19 (i) The nature of the offense;

20 (ii) The significance of the child's testimony to the
21 case;

22 (iii) The likelihood of obtaining the child's testimony
23 without modification of trial procedure or with a different
24 modification involving less substantial digression from trial
25 procedure than the modification under consideration;

1 (iv) The child's age;

2 (v) The child's psychological maturity and understanding;

3 and

4 (vi) The nature, degree, and duration of potential injury
5 to the child from testifying.

6 (i) The court may order an independent examination by a
7 psychologist or psychiatrist if the defense attorney requests the
8 opportunity to rebut the showing of compelling need produced by the
9 prosecuting attorney. Such examination shall be conducted in the
10 child's county of residence.

11 (j) After a finding of compelling need by the court,
12 neither party may call the child witness to testify as a live
13 witness at the trial before the jury unless that party demonstrates
14 that the compelling need no longer exists.

15 (k) Nothing in this section shall limit the right of
16 access of the media or the public to open court.

17 (l) Nothing in this section shall preclude discovery by
18 the defendant as set forth in section 29-1912.

19 (m) The Supreme Court may adopt and promulgate rules of
20 procedure to administer this section, which rules shall not be in
21 conflict with laws governing such matters.

22 (2)(a) No custodian of a videotape of a child victim
23 or child witness alleging, explaining, denying, or describing an
24 act of sexual assault pursuant to section 28-319 or 28-320.01 or
25 section 6 of this act or child abuse pursuant to section 28-707

1 as part of an investigation or evaluation of the abuse or assault
2 shall release or use a videotape or copies of a videotape or
3 consent, by commission or omission, to the release or use of a
4 videotape or copies of a videotape to or by any other party without
5 a court order, notwithstanding the fact that the child victim or
6 child witness has consented to the release or use of the videotape
7 or that the release or use is authorized under law, except as
8 provided in section 28-730. Any custodian may release or consent to
9 the release or use of a videotape or copies of a videotape to law
10 enforcement agencies or agencies authorized to prosecute such abuse
11 or assault cases on behalf of the state.

12 (b) The court order may govern the purposes for which
13 the videotape may be used, the reproduction of the videotape, the
14 release of the videotape to other persons, the retention and return
15 of copies of the videotape, and any other requirements reasonably
16 necessary for the protection of the privacy and best interests of
17 the child victim or child witness.

18 (c) Pursuant to section 29-1912, the defendant described
19 in the videotape may petition the district court in the county
20 where the alleged offense took place or where the custodian of the
21 videotape resides for an order releasing to the defendant a copy of
22 the videotape.

23 (d) Any person who releases or uses a videotape except as
24 provided in this section shall be guilty of a Class I misdemeanor.

25 Sec. 13. Section 29-2028, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-2028 The testimony of a person who is a victim of
3 a sexual assault as defined in sections 28-319 to 28-320.01 and
4 section 6 of this act shall not require corroboration.

5 Sec. 14. Section 29-2221, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 29-2221 (1) Whoever has been twice convicted of a crime,
8 sentenced, and committed to prison, in this or any other state or
9 by the United States or once in this state and once at least in
10 any other state or by the United States, for terms of not less
11 than one year each shall, upon conviction of a felony committed
12 in this state, be deemed to be a habitual criminal and shall be
13 punished by imprisonment in a Department of Correctional Services
14 adult correctional facility for a mandatory minimum term of ten
15 years and a maximum term of not more than sixty years, except that:

16 (a) If the felony committed is in violation of section
17 28-303, 28-304, 28-308, 28-313, 28-319, 28-502, 28-929, or 28-1222
18 or section 6 of this act, and at least one of the habitual
19 criminal's prior felony convictions was for a violation of one of
20 the sections listed in this subdivision or of a similar statute in
21 another state or of the United States, the mandatory minimum term
22 shall be twenty-five years and the maximum term not more than sixty
23 years;

24 (b) If the felony committed is in violation of subsection
25 (3) of section 28-306 and at least one of the prior convictions is

1 in violation of subsection (3) of section 28-306 and the other is
2 in violation of one of the sections set forth in subdivision (a) of
3 this subsection or if the felony committed is in violation of one
4 of the sections set forth in subdivision (a) of this subsection and
5 both of the prior convictions are in violation of subsection (3)
6 of section 28-306, the mandatory minimum term shall be twenty-five
7 years and the maximum term not more than sixty years; and

8 (c) If a greater punishment is otherwise provided by
9 statute, the law creating the greater punishment shall govern.

10 (2) When punishment of an accused as a habitual criminal
11 is sought, the facts with reference thereto shall be charged in the
12 indictment or information which contains the charge of the felony
13 upon which the accused is prosecuted, but the fact that the accused
14 is charged with being a habitual criminal shall not be an issue
15 upon the trial of the felony charge and shall not in any manner
16 be disclosed to the jury. If the accused is convicted of a felony,
17 before sentence is imposed a hearing shall be had before the court
18 alone as to whether such person has been previously convicted of
19 prior felonies. The court shall fix a time for the hearing and
20 notice thereof shall be given to the accused at least three days
21 prior thereto. At the hearing, if the court finds from the evidence
22 submitted that the accused has been convicted two or more times of
23 felonies and sentences imposed therefor by the courts of this or
24 any other state or by the United States, the court shall sentence
25 such person so convicted as a habitual criminal.

1 (3) If the person so convicted shows to the satisfaction
2 of the court before which the conviction was had that he or she
3 was released from imprisonment upon either of such sentences upon
4 a pardon granted for the reason that he or she was innocent, such
5 conviction and sentence shall not be considered as such under this
6 section and section 29-2222.

7 Sec. 15. Section 29-2290, Revised Statutes Cumulative
8 Supplement, 2004, is amended to read:

9 29-2290 (1) Notwithstanding any other provision of law,
10 when a person has been convicted of sexual assault pursuant to
11 sections 28-317 to 28-320, sexual assault of a child in the second
12 or third degree pursuant to section 28-320.01, sexual assault of a
13 child in the first degree pursuant to section 6 of this act, or
14 any other offense under Nebraska law when sexual contact or sexual
15 penetration is an element of the offense, the presiding judge
16 shall, at the request of the victim as part of the sentence of
17 the convicted person when the circumstances of the case demonstrate
18 a possibility of transmission of the human immunodeficiency virus,
19 order the convicted person to submit to a human immunodeficiency
20 virus antibody or antigen test. Such test shall be conducted under
21 the jurisdiction of the Department of Correctional Services. The
22 Department of Correctional Services shall make the results of the
23 test available only to the victim, to the parents or guardian of
24 the victim if the victim is a minor or is mentally incompetent, to
25 the convicted person, to the parents or guardian of the convicted

1 person if the convicted person is a minor or mentally incompetent,
2 to the court issuing the order for testing, and to the Department
3 of Health and Human Services.

4 (2) If the human immunodeficiency virus test indicates
5 the presence of human immunodeficiency virus infection, the
6 Department of Correctional Services shall provide counseling to the
7 convicted person regarding human immunodeficiency virus disease and
8 referral to appropriate health care and support services.

9 (3) The Department of Correctional Services shall provide
10 to the Department of Health and Human Services the result of
11 any human immunodeficiency virus test conducted pursuant to this
12 section and information regarding the request of the victim. The
13 Department of Health and Human Services shall notify the victim
14 or the parents or guardian of the victim if the victim is a
15 minor or mentally incompetent and shall make available to the
16 victim counseling and testing regarding human immunodeficiency
17 virus disease and referral to appropriate health care and support
18 services.

19 (4) The cost of testing under this section shall be paid
20 by the convicted person tested unless the court has determined the
21 convicted person to be indigent.

22 (5) Filing of a notice of appeal shall not automatically
23 stay an order that the convicted person submit to a human
24 immunodeficiency virus test.

25 (6) For purposes of this section:

1 (a) Convicted shall include adjudicated under juvenile
2 proceedings;

3 (b) Convicted person shall include a child adjudicated of
4 an offense described in subsection (1) of this section; and

5 (c) Sentence shall include a disposition under juvenile
6 proceedings.

7 (7) The Department of Correctional Services, in
8 consultation with the Department of Health and Human Services,
9 shall adopt and promulgate rules and regulations to carry out this
10 section.

11 Sec. 16. Section 29-2923, Revised Statutes Cumulative
12 Supplement, 2004, is amended to read:

13 29-2923 For purposes of the Convicted Sex Offender Act:

14 (1) Aftercare treatment program shall mean any public or
15 private facility or service which offers treatment on an outpatient
16 basis or in a minimally restricted setting, which treatment is
17 appropriate for a convicted sex offender after he or she has
18 successfully completed an inpatient treatment program operated by
19 the Department of Health and Human Services; and

20 (2) Convicted sex offender shall mean a person who is
21 convicted of sexual assault in the first degree as provided in
22 section 28-319, sexual assault in the second degree as provided in
23 section 28-320, sexual assault of a child in the second or third
24 degree as provided in section 28-320.01, sexual assault of a child
25 in the first degree as provided in section 6 of this act, incest

1 as provided in section 28-703, or attempt to commit sexual assault
2 in the first degree pursuant to section 28-201 and sentenced to a
3 term of imprisonment in a Department of Correctional Services adult
4 correctional facility.

5 Sec. 17. Section 29-4001, Revised Statutes Cumulative
6 Supplement, 2004, is amended to read:

7 29-4001 Sections 29-4001 to 29-4013 and section 26 of
8 this act shall be known and may be cited as the Sex Offender
9 Registration Act.

10 Sec. 18. Section 29-4003, Revised Statutes Supplement,
11 2005, is amended to read:

12 29-4003 (1) Except as provided in subsection (2) of this
13 section, the Sex Offender Registration Act shall apply to any
14 person who on or after January 1, 1997:

15 (a) Pleads guilty to or is found guilty of:

16 (i) Kidnapping of a minor pursuant to section 28-313,
17 except when the person is the parent of the minor and was not
18 convicted of any other offense in this section;

19 (ii) False imprisonment of a minor pursuant to section
20 28-314 or 28-315;

21 (iii) Sexual assault pursuant to section 28-319 or
22 28-320;

23 (iv) Sexual assault of a child in the second or third
24 degree pursuant to section 28-320.01;

25 (v) Sexual assault of a child in the first degree

1 pursuant to section 6 of this act;

2 ~~(v)~~ (vi) Sexual assault of a vulnerable adult pursuant to
3 subdivision (1)(c) of section 28-386;

4 ~~(vi)~~ (vii) Incest of a minor pursuant to section 28-703;

5 ~~(vii)~~ (viii) Pandering of a minor pursuant to section
6 28-802;

7 ~~(viii)~~ (ix) Visual depiction of sexually explicit conduct
8 of a child pursuant to section 28-1463.03 or 28-1463.05;

9 ~~(ix)~~ (x) Knowingly possessing any visual depiction of
10 sexually explicit conduct which has a child as one of its
11 participants or portrayed observers pursuant to section 28-813.01;

12 ~~(x)~~ (xi) Criminal child enticement pursuant to section
13 28-311;

14 ~~(xi)~~ (xii) Child enticement by means of a computer
15 pursuant to section 28-320.02; ~~or~~

16 ~~(xii)~~ (xiii) Debauching a minor pursuant to section
17 28-805; or

18 (xiv) Attempt, solicitation, or conspiracy to commit
19 an offense listed in subdivisions (1)(a)(i) through ~~(1)(a)(xi)~~
20 (1)(a)(xiii) of this section;

21 (b) Enters the state and has pleaded guilty to or has
22 been found guilty of any offense that is substantially equivalent
23 to a registrable offense under subdivision (1)(a) of this section
24 by any state, territory, commonwealth, or other jurisdiction of the
25 United States, by the United States Government, or by court-martial

1 or other military tribunal, notwithstanding a procedure comparable
2 in effect to that described under section 29-2264 or any other
3 procedure to nullify a conviction other than by pardon; ~~or~~

4 (c) Is incarcerated in a jail, a penal or correctional
5 facility, or any other public or private institution or is under
6 probation or parole as a result of pleading guilty to or being
7 found guilty of a registrable offense under subdivision (1)(a) or
8 (b) of this section prior to January 1, 1997; or

9 (d) Enters the state and is required to register as a sex
10 offender under the laws of another state, territory, commonwealth,
11 or other jurisdiction of the United States.

12 (2) In the case of a person convicted of a violation of
13 section ~~28-311~~, 28-313, 28-314, ~~or~~ 28-315, or 28-805, the convicted
14 person shall be subject to the Sex Offender Registration Act,
15 unless the sentencing court determines at the time of sentencing,
16 in light of all the facts, that the convicted person is not subject
17 to the act. The sentencing court shall make such determination part
18 of the sentencing order.

19 (3) A person appealing a conviction of a registrable
20 offense under this section shall be required to comply with the act
21 during the appeals process.

22 Sec. 19. Section 29-4004, Revised Statutes Supplement,
23 2005, is amended to read:

24 29-4004 (1) Any person subject to the Sex Offender
25 Registration Act shall register with the sheriff of the county in

1 which the person resides or is temporarily domiciled within five
2 working days of becoming subject to the act.

3 (2) Any person required to register under the act shall
4 inform the sheriff of the county in which he or she resides,
5 in writing, if he or she has a new address within such county
6 within five working days after the address change. The sheriff
7 shall forward such information to the sex offender registration and
8 community notification division of the Nebraska State Patrol within
9 five working days after receipt of the new address.

10 (3) Any person required to register under the act shall
11 inform the sheriff of the county in which he or she resides, in
12 writing, if he or she has a new address in a different county
13 in this state within five working days after the address change.
14 The sheriff shall forward the new address to the sex offender
15 registration and community notification division of the Nebraska
16 State Patrol within five working days after receipt of the new
17 address. The division shall notify the sheriff of the county to
18 which the person is relocating of the new address. The person shall
19 report to the county sheriff of his or her new county of residence
20 and register with such county sheriff within five working days
21 after the address change.

22 (4) Any person required to register under the act shall
23 inform the sheriff of the county in which he or she resides,
24 in writing, if he or she moves to a new out-of-state address
25 within five working days after the address change. The sheriff

1 shall forward the new out-of-state address to the sex offender
2 registration and notification division of the Nebraska State Patrol
3 within five working days after receipt of the new out-of-state
4 address. The division shall forward the new out-of-state address to
5 the other state's central repository for sex offender registration.

6 (5) Any person required to register under the act who
7 is residing in another state or is temporarily domiciled in
8 another state, and is employed, carries on a vocation, or attends
9 school in this state shall report and register with the sheriff
10 of the county in which he or she is employed, carries on a
11 vocation, or attends school in this state within five working
12 days after becoming employed, carrying on a vocation, or attending
13 school. The person shall also notify the sheriff of any changes in
14 employment, vocation, or school of attendance, in writing, within
15 five working days after the change. The sheriff shall forward
16 this information to the sex offender registration and community
17 notification division of the Nebraska State Patrol within five
18 working days after receipt of such information. For purposes of
19 this subsection:

20 (a) Attends school means enrollment in any educational
21 institution in this state on a full-time or part-time basis;

22 (b) Is employed or carries on a vocation means any
23 full-time or part-time employment, with or without compensation,
24 which lasts for a duration of more than fourteen days or for an
25 aggregate period exceeding thirty days in a calendar year; and

1 (c) Temporarily domiciled means a place at which the
2 person actually lives or stays on a temporary basis even though
3 he or she may plan to return to his or her permanent address
4 or to another temporary address. For purposes of this section, a
5 temporary domicile means any place at which the person actually
6 lives or stays for a period of at least five working days.

7 (6) Any person incarcerated for a registrable offense
8 under section 29-4003 in a jail, penal or correctional facility, or
9 other public or private institution who is not already registered
10 shall be registered by the jail, penal or correctional facility,
11 or public or private institution prior to his or her discharge,
12 parole, furlough, work release, or release. The person shall be
13 informed and information shall be obtained as required in section
14 29-4006.

15 (7) Any person required to register under the act shall
16 inform the sheriff of the county in which he or she resides, in
17 writing, of each postsecondary educational institution at which
18 he or she is employed, carries on a vocation, or attends school,
19 within five working days after such employment or attendance.
20 The person shall also notify the sheriff of any change in such
21 employment or attendance status at the postsecondary educational
22 institution, in writing, within five working days after such
23 change. The sheriff shall forward the information regarding such
24 employment or attendance to the sex offender registration and
25 community notification division of the Nebraska State Patrol within

1 five working days after receipt of the information.

2 (8) Any person required to register or who is registered
3 under the act, but is incarcerated for more than five days, whether
4 or not in his or her own county of residence or temporary domicile,
5 shall inform the sheriff of the county in which such person would
6 reside or would be temporarily domiciled if he or she was not
7 incarcerated, within five working days after incarceration, of his
8 or her incarceration and his or her expected release date, if any
9 such date is available. The sheriff shall forward the information
10 regarding incarceration to the sex offender registration and
11 community notification division of the Nebraska State Patrol within
12 five working days after receipt of the information.

13 (9) Any person required to register or who is registered
14 under the act who no longer has a residence or temporary domicile
15 shall notify the county sheriff in which he or she is located, in
16 writing, within five working days after such change in residence
17 or temporary domicile. Such person shall update his or her
18 registration, in writing, on a form approved by the sex offender
19 registration and community notification division of the Nebraska
20 State Patrol at least once every thirty calendar days during the
21 time he or she remains without residence or temporary domicile.

22 (10) Each sheriff registering entity shall forward
23 all written information, photographs, and fingerprints obtained
24 pursuant to the act to the sex offender registration and community
25 notification division of the Nebraska State Patrol within five

1 working days. The information shall be forwarded on forms furnished
2 by the division. The division shall maintain a central registry of
3 sex offenders required to register under the act.

4 Sec. 20. Section 29-4005, Revised Statutes Cumulative
5 Supplement, 2004, is amended to read:

6 29-4005 (1) Except as provided in subsections (2) and (3)
7 of this section, any person to whom the Sex Offender Registration
8 Act applies shall be required to register during any period of
9 supervised release, probation, or parole and shall continue to
10 comply with the act for a period of ten years after the date of
11 discharge from probation, parole, or supervised release or release
12 from incarceration, whichever date is most recent. The ten-year
13 registration requirement shall not apply to any person while he or
14 she is incarcerated in a jail, a penal or correctional facility, or
15 any other public or private institution. The ten-year registration
16 requirement does not include any time period when any person who is
17 required to register under the act knowingly or willfully fails to
18 comply with such registration requirement.

19 (2) A person sentenced for a registrable offense required
20 to register under section 29-4003 shall be required to register
21 under the act for the rest of his or her life if ~~such registrable~~
22 the offense creating the obligation to register is an aggravated
23 offense, ~~or if~~ if the person has a prior conviction for a registrable
24 offense, or if the person is required to register as a sex
25 offender for the rest of his or her life under the laws of another

1 state, territory, commonwealth, or other jurisdiction of the United
2 States. The A sentencing court shall make that fact part of the
3 sentencing order.

4 (3) (a) When sentencing a person for a registrable offense
5 under section 29-4003, a court may also determine if the person
6 is a sexually violent predator. When making its determination
7 the court shall consider information contained in the presentence
8 report and the recommendation of experts in the behavior and
9 treatment of sex offenders, victims' rights advocates, and
10 representatives of law enforcement agencies.

11 (b) In addition to complying with the annual verification
12 requirements in section 29-4006 and the lifetime registration
13 requirements of subsection (2) of this section, a person determined
14 to be a sexually violent predator shall verify the registration
15 information quarterly after the initial registration date.

16 (4) For purposes of this section:

17 (a) Aggravated offense means any registrable offense
18 under section 29-4003 which involves the penetration of (i) a
19 victim age twelve years or more through the use of force or the
20 threat of serious violence or (ii) a victim under the age of twelve
21 years;

22 (b) Mental abnormality means a congenital or acquired
23 condition of a person that affects the emotional or volitional
24 capacity of the person in a manner that predisposes that person to
25 the commission of a criminal sexual act to a degree that makes the

1 person a menace to the health and safety of other persons; and

2 (c) Sexually violent predator means a person who has been
3 convicted of one or more registrable offenses under section 29-4003
4 and who suffers from a mental abnormality or personality disorder
5 that makes the person likely to engage in sexually violent offenses
6 directed at a stranger, or at a person with whom a relationship
7 has been established or promoted, for the primary purpose of
8 victimization.

9 Sec. 21. Section 29-4006, Revised Statutes Cumulative
10 Supplement, 2004, is amended to read:

11 29-4006 (1) Registration information required by the Sex
12 Offender Registration Act shall be in a form approved by the sex
13 offender registration and community notification division of the
14 Nebraska State Patrol and shall include the following information:

15 (a) The legal name and all aliases which the person has
16 used or under which the person has been known;

17 (b) A complete description of the person, including date
18 of birth, social security number, photographs, and fingerprints;

19 (c) A listing of each registrable offense under section
20 29-4003 to which the person pleaded guilty or was found guilty, the
21 jurisdiction where each offense was committed, the court in which
22 the person pleaded guilty or was found guilty of each offense, and
23 the name under which the person pleaded guilty or was found guilty
24 of each offense;

25 (d) The name and location of each jail, penal or

1 correctional facility, or public or private institution to which
2 the person was incarcerated for each offense and the actual time
3 served or confined; and

4 (e) The address of the person's current residence and
5 place of employment or vocation and any school he or she is
6 attending.

7 (2) For the duration of the registration period required
8 by the act, registration information shall be verified annually
9 within thirty days after the anniversary date of the person's
10 initial registration date. To properly verify, the following shall
11 occur:

12 (a) The sex offender registration and community
13 notification division of the Nebraska State Patrol shall mail a
14 nonforwardable verification form to the last-reported address of
15 the person;

16 (b) The verification form shall be signed by the person
17 and state whether the address last reported to the division is
18 still correct; and

19 (c) The person shall mail the verification form to the
20 division within ten days after receipt of the form.

21 (3) If the person fails to complete and mail the
22 verification form to the sex offender registration and community
23 notification division of the Nebraska State Patrol within ten days
24 after receipt of the form, or the form cannot be delivered due to
25 the registrant not being at the address last reported, the person

1 shall be in violation of this section unless the person proves that
2 the address last reported to the division is still correct.

3 (4) If the person falsifies the registration or
4 verification form, the person shall be in violation of this
5 section.

6 (5) The requirement to verify the address of a sexually
7 violent predator quarterly as provided in section 29-4005 and
8 the requirement to verify the address of any other registrant
9 annually as required in this section shall not apply during periods
10 of such registrant's incarceration. Address verification shall be
11 resumed as soon as such incarcerated person is placed on any type
12 of supervised release, parole, or probation or is released from
13 incarceration. Prior to any type of release from incarceration,
14 such person shall report the change of address to the sheriff of
15 the county in which he or she is incarcerated and the sheriff of
16 the county in which he or she resides or is temporarily domiciled.
17 The sheriff shall forward the change of address to the sex offender
18 registration and community notification division of the Nebraska
19 State Patrol.

20 (6) Any person required to register under the Sex
21 Offender Registration Act shall inform the sheriff of any legal
22 change in name, in writing, within five working days after such
23 change, and provide a copy of the legal documentation supporting
24 the change in name. The sheriff shall forward the information to
25 the sex offender registration and community notification division

1 of the Nebraska State Patrol, in writing, within five working days
2 after receipt of the information.

3 Sec. 22. Section 29-4007, Revised Statutes Cumulative
4 Supplement, 2004, is amended to read:

5 29-4007 (1) When sentencing a person convicted of a
6 registrable offense under section 29-4003, the court shall:

7 (a) Provide written notification of the duty to register
8 under the Sex Offender Registration Act at the time of sentencing
9 to any defendant who has pleaded guilty or has been found
10 guilty of a registrable offense under section 29-4003. The written
11 notification shall:

12 (i) Inform the defendant that if he or she moves to
13 another address within the same county or ceases to have a
14 residence or temporary domicile, he or she must report all address
15 changes, including not having a residence or temporary domicile, to
16 the county sheriff in the county where he or she has been residing
17 within five working days after his or her move;

18 (ii) Inform the defendant that if he or she moves to
19 another county in the State of Nebraska, he or she must notify the
20 county sheriff in the county where he or she had been last residing
21 and the county sheriff in the county where he or she is living of
22 his or her current address. The notice must be given within five
23 working days after his or her move;

24 (iii) Inform the defendant that if he or she moves to
25 another state, he or she must report the change of address to the

1 county sheriff of the county where he or she has been residing
2 and must comply with the registration requirements of the state to
3 which he or she is moving. The notice must be given within five
4 working days after his or her move;

5 (iv) Inform the defendant that he or she shall (A) inform
6 the sheriff of the county in which he or she resides, in writing,
7 of each postsecondary educational institution at which he or she
8 is employed, carries on a vocation, or attends school, within five
9 working days after such employment or attendance and (B) notify the
10 sheriff of any change in such employment or attendance status of
11 such person at such postsecondary educational institution; ~~and~~

12 (v) Inform the defendant that if he or she goes to
13 another state to work or goes to another state as a student and
14 still resides or is temporarily domiciled in this state, he or she
15 must comply with the registration requirements of both states; and

16 (vi) Inform the defendant that fingerprints and a
17 photograph will be obtained by any registering entity in order to
18 comply with the registration requirements;

19 (b) Require the defendant to read and sign a form stating
20 that the duty of the defendant to register under the Sex Offender
21 Registration Act has been explained;

22 (c) Retain a copy of the written notification signed by
23 the defendant; and

24 (d) If the defendant is adjudicated a sexually violent
25 predator, include the supporting reports and other information

1 supporting this finding.

2 A copy of the signed, written notification and the
3 journal entry of the court shall be provided to the county
4 attorney, the defendant, the sex offender registration and
5 community notification division of the Nebraska State Patrol, and
6 the county sheriff of the county in which the defendant resides
7 or is temporarily domiciled.

8 (2) When a person is convicted of a registrable offense
9 under section 29-4003 and is not subject to immediate incarceration
10 upon sentencing, prior to being released by the court, the
11 sentencing court shall ensure that the defendant is registered
12 by the sheriff of the county in which the defendant resides or
13 is temporarily domiciled is convicted no later than the time of
14 sentencing. The sheriff shall obtain full registration information
15 and documents as required by section 29-4006, and forward the
16 information and documents to the sex offender registration and
17 notification division of the Nebraska State Patrol within five
18 working days.

19 (3) (a) The Department of Correctional Services or a city
20 or county correctional or jail facility shall provide written
21 notification of the duty to register pursuant to the Sex Offender
22 Registration Act to any person committed to its custody for a
23 registrable offense under section 29-4003 prior to the person's
24 release from incarceration. The written notification shall:

25 (i) Inform the person that if he or she moves to another

1 address within the same county, he or she must report all address
2 changes to the county sheriff in the county where he or she has
3 been residing within five working days after his or her move;

4 (ii) Inform the person that if he or she moves to another
5 county in the State of Nebraska, he or she must notify the county
6 sheriff in the county where he or she had been last residing and
7 the county sheriff in the county where he or she is living of
8 his or her current address. The notice must be given within five
9 working days after his or her move;

10 (iii) Inform the person that if he or she moves to
11 another state, he or she must report the change of address to the
12 county sheriff of the county where he or she has been residing
13 and must comply with the registration requirements of the state to
14 which he or she is moving. The notice must be given within five
15 working days after his or her move;

16 (iv) Inform the person that he or she shall (A) inform
17 the sheriff of the county in which he or she resides, in writing,
18 of each postsecondary educational institution at which he or she
19 is employed, carries on a vocation, or attends school, within five
20 working days after such employment or attendance and (B) notify the
21 sheriff of any change in such employment or attendance status of
22 such person at such postsecondary educational institution; and

23 (v) Inform the person that if he or she goes to another
24 state to work or goes to another state as a student and still
25 resides or is temporarily domiciled in this state, he or she must

1 comply with the registration requirements of both states; and
2 (vi) Inform the defendant that fingerprints and a
3 photograph will be obtained by any registering entity in order to
4 comply with the registration requirements.

5 (b) The Department of Correctional Services or a city or
6 county correctional or jail facility shall:

7 (i) Require the person to read and sign the notification
8 form stating that the duty to register under the Sex Offender
9 Registration Act has been explained;

10 (ii) Retain a signed copy of the written notification to
11 register; and

12 (iii) Provide a copy of the notification to register
13 to the person, the sex offender registration and notification
14 division of the Nebraska State Patrol, and the sheriff of the
15 county in which the person will be residing upon release from the
16 institution. If the person is going to reside outside of the State
17 of Nebraska, then notification to the sheriff is not required.

18 (4) The Department of Motor Vehicles shall cause written
19 notification of the duty to register to be provided on the
20 applications for a motor vehicle operator's license and for a
21 commercial driver's license.

22 (5) All written notification as provided in this section
23 shall be on a form prepared by the Attorney General.

24 Sec. 23. Section 29-4009, Revised Statutes Supplement,
25 2005, is amended to read:

1 29-4009 Information obtained under the Sex Offender
2 Registration Act shall be confidential, except that:

3 (1) Information shall be disclosed to law enforcement
4 agencies for law enforcement purposes;

5 (2) Information on persons subject to section 89 of this
6 act shall be disclosed to the Office of Parole Administration;

7 (3) Information concerning a defendant who is registered
8 and reports to be employed with, carrying on a vocation at,
9 or attending a postsecondary educational institution, shall be
10 disclosed to the law enforcement agency having responsibility for
11 the campus where the institution is located. This notification
12 shall go to the affected campus police, if any, and other law
13 enforcement agency having jurisdiction in the area in which the
14 institution is located;

15 ~~(2)~~ (4) Information may be disclosed to governmental
16 agencies conducting confidential background checks for employment,
17 volunteer, licensure, or certification purposes;

18 ~~(3)~~ (5) Information may be disclosed to health care
19 providers who serve children or vulnerable adults for the purpose
20 of conducting confidential background checks for employment;

21 ~~(4)~~ (6) Information concerning the address or whereabouts
22 of the person required to register may be disclosed to the victim
23 or victims of such person; and

24 ~~(5)~~ (7) The Nebraska State Patrol, any law enforcement
25 agency, and any probation or parole officer may release relevant

1 information that is necessary to protect the public concerning a
2 specific person required to register, except that the identity of
3 a victim of an offense that requires registration shall not be
4 released.

5 The release of information authorized by this section
6 shall conform with the rules and regulations adopted and
7 promulgated by the Nebraska State Patrol pursuant to section
8 29-4013.

9 Sec. 24. Section 29-4011, Revised Statutes Cumulative
10 Supplement, 2004, is amended to read:

11 29-4011 (1) Any person required to register under the Sex
12 Offender Registration Act who violates the act is guilty of a Class
13 IV felony unless the act which caused the person to be placed on
14 the registry was a misdemeanor, in which case a violation of the
15 Sex Offender Registration Act shall be a crime of the same class or
16 within the same penalty range as the original act.

17 (2) Any person required to register under the Sex
18 Offender Registration Act who violates the act and who has
19 previously been convicted of a violation of the act is guilty
20 of a Class III felony and shall be sentenced to a mandatory minimum
21 term of at least one year in prison unless the act which caused
22 the person to be placed on the registry was a misdemeanor, in which
23 case the violation of the Sex Offender Registration Act shall be a
24 Class IV felony.

25 Sec. 25. Section 29-4013, Revised Statutes Supplement,

1 2005, is amended to read:

2 29-4013 (1) The Nebraska State Patrol shall adopt and
3 promulgate rules and regulations to carry out the registration
4 provisions of the Sex Offender Registration Act.

5 (2)(a) The Nebraska State Patrol shall adopt and
6 promulgate rules and regulations for the release of information
7 pursuant to section 29-4009.

8 (b) The rules and regulations adopted by the Nebraska
9 State Patrol shall identify and incorporate factors relevant to the
10 sex offender's risk of recidivism. Factors relevant to the risk of
11 recidivism include, but are not limited to:

12 (i) Conditions of release that minimize the risk of
13 recidivism, including probation, parole, counseling, therapy, or
14 treatment;

15 (ii) Physical conditions that minimize the risk of
16 recidivism, including advanced age or debilitating illness; and

17 (iii) Any criminal history of the sex offender indicative
18 of a high risk of recidivism, including:

19 (A) Whether the conduct of the sex offender was found to
20 be characterized by repetitive and compulsive behavior;

21 (B) Whether the sex offender committed the sexual offense
22 against a child;

23 (C) Whether the sexual offense involved the use of a
24 weapon, violence, or infliction of serious bodily injury;

25 (D) The number, date, and nature of prior offenses;

1 (E) Whether psychological or psychiatric profiles
2 indicate a risk of recidivism;

3 (F) The sex offender's response to treatment;

4 (G) Any recent threats by the sex offender against a
5 person or expressions of intent to commit additional crimes; and

6 (H) Behavior of the sex offender while confined.

7 (c) The procedures for release of information established
8 by the Nebraska State Patrol shall provide for three levels of
9 notification by the law enforcement agency in whose jurisdiction
10 the sex offender is to be released depending on the risk of
11 recidivism by the sex offender as follows:

12 (i) If the risk of recidivism is low, other law
13 enforcement agencies ~~likely to encounter the sex offender~~ shall
14 be notified;

15 (ii) If the risk of recidivism is moderate, in addition
16 to the notice required by subdivision (i) of this subdivision,
17 schools, day care centers, health care facilities providing
18 services to children or vulnerable adults, and religious and youth
19 organizations shall be notified; and

20 (iii) If the risk of recidivism is high, in addition
21 to the notice required by subdivisions (i) and (ii) of this
22 subdivision, the public shall be notified through means designed to
23 reach members of the public, ~~likely to encounter the sex offender,~~
24 which are limited to direct contact, news releases, ~~or~~ a method
25 utilizing a telephone system, or the Internet. The Nebraska State

1 Patrol shall provide notice of sex offenders with a high risk of
2 recidivism to at least one legal newspaper published in and of
3 general circulation in the county where the offender is registered
4 or, if none is published in the county, in a legal newspaper of
5 general circulation in such county. If any means of notification
6 proposes a fee for usage, then nonprofit organizations holding
7 a certificate of exemption under section 501(c) of the Internal
8 Revenue Code shall not be charged.

9 (d) The Nebraska State Patrol shall establish procedures
10 for the evaluation of the risk of recidivism and implementation of
11 community notification that promote the uniform application of the
12 notification rules and regulations required by this section.

13 (e) The Nebraska State Patrol or a designee shall assign
14 a notification level, based upon the risk of recidivism, to all
15 persons required to register under the act.

16 (f) Personnel and mental health professionals for the
17 sex offender registration and community notification division of
18 the Nebraska State Patrol shall have access to all documents that
19 are generated by any governmental agency that may have bearing on
20 sex offender risk assessment and community notification pursuant
21 to this section. This may include, but is not limited to, law
22 enforcement reports, presentence reports, criminal histories, or
23 birth certificates. The division shall not be charged for access
24 to documents under this subdivision. Access to such documents
25 will ensure that a fair risk assessment is completed using the

1 totality of all information available. For purposes of this
2 subdivision, mental health professional means (i) a practicing
3 physician licensed to practice medicine in this state under
4 the provisions of section 71-102, (ii) a practicing psychologist
5 licensed to engage in the practice of psychology in this state
6 as provided in section 71-1,206.14, or (iii) a practicing mental
7 health professional licensed or certified in this state as provided
8 in section 71-1,333.

9 (3) Nothing in subsection (2) of this section shall
10 be construed to prevent law enforcement officers from providing
11 community notification concerning any person who poses a danger
12 under circumstances that are not provided for in the act.

13 Sec. 26. Any person convicted of a crime requiring
14 registration as a sex offender pursuant to section 29-4003 and
15 committed to the Department of Correctional Services shall attend
16 appropriate sex offender treatment and counseling programming
17 offered by the department. Refusal to participate in such
18 programming shall not result in disciplinary action or a loss of
19 good time credit on the part of the offender but shall require
20 a civil commitment evaluation pursuant to section 88 of this act
21 prior to the completion of his or her criminal sentence.

22 Sec. 27. Sections 27 to 29 of this act shall be known and
23 may be cited as the Sexual Predator Residency Restriction Act.

24 Sec. 28. For purposes of the Sexual Predator Residency
25 Restriction Act:

1 (1) Child care facility means a facility licensed
2 pursuant to the Child Care Licensing Act;

3 (2) Political subdivision means a village, a city, a
4 county, a school district, a public power district, or any other
5 unit of local government;

6 (3) School means a public, private, denominational, or
7 parochial school which meets the requirements for accreditation or
8 approval prescribed in Chapter 79;

9 (4) Sex offender means an individual who has been
10 convicted of a crime listed in section 29-4003 and who is required
11 to register as a sex offender pursuant to the Sex Offender
12 Registration Act; and

13 (5) Sexual predator means an individual who is required
14 to register under the Sex Offender Registration Act, who has a high
15 risk of recidivism as determined by the Nebraska State Patrol under
16 section 29-4013, and who has victimized a person eighteen years of
17 age or younger.

18 Sec. 29. (1) A political subdivision may enact an
19 ordinance, resolution, or other legal restriction prescribing where
20 sex offenders may reside only if the restrictions are limited
21 to sexual predators, extend no more than five hundred feet from
22 a school or child care facility, and meet the requirements of
23 subsection (2) of this section.

24 (2) An ordinance, resolution, or other legal restriction
25 enacted by a political subdivision shall not apply to a sexual

1 predator who:

2 (a) Resides within a prison or a correctional or
3 treatment facility operated by the state or a political
4 subdivision;

5 (b) Established a residence before July 1, 2006, and has
6 not moved from that residence; or

7 (c) Established a residence after July 1, 2006, and
8 the school or child care facility triggering the restriction
9 was established after the initial date of the sexual predator's
10 residence at that location.

11 (3) Any ordinance, resolution, or other legal restriction
12 prescribing where sex offenders may reside which does not meet the
13 requirements of this section is void, regardless of whether such
14 ordinance, resolution, or legal restriction was adopted prior to,
15 on, or after the effective date of this act.

16 Sec. 30. Section 29-4103, Revised Statutes Cumulative
17 Supplement, 2004, is amended to read:

18 29-4103 For purposes of the DNA Detection of Sexual and
19 Violent Offenders Act:

20 (1) Combined DNA Index System means the Federal Bureau
21 of Investigation's national DNA identification index system that
22 allows the storage and exchange of DNA records submitted by state
23 and local forensic DNA laboratories;

24 (2) DNA means deoxyribonucleic acid which is located in
25 the cells and provides an individual's personal genetic blueprint.

1 DNA encodes genetic information that is the basis of human heredity
2 and forensic identification;

3 (3) DNA record means the DNA identification information
4 stored in the State DNA Data Base or the Combined DNA Index System
5 which is derived from DNA typing test results;

6 (4) DNA sample means a blood or tissue sample provided by
7 any person with respect to offenses covered by the DNA Detection of
8 Sexual and Violent Offenders Act for analysis or storage, or both;

9 (5) DNA typing tests means the laboratory procedures
10 which evaluate the characteristics of a DNA sample which are of
11 value in establishing the identity of an individual;

12 (6) Felony sex offense means a felony offense, or an
13 attempt, conspiracy, or solicitation to commit a felony offense,
14 under any of the following:

15 (a) Kidnapping of a minor pursuant to section 28-313,
16 except when the person is the parent of the minor and was not
17 convicted of any other offense in this subdivision;

18 (b) Incest of a minor pursuant to section 28-703;

19 (c) Sexual assault in the first or second degree pursuant
20 to section 28-319 or 28-320;

21 (d) Sexual assault of a child in the second or third
22 degree pursuant to section 28-320.01;

23 (e) Sexual assault of a child in the first degree
24 pursuant to section 6 of this act;

25 ~~(e)~~ (f) Sexual assault of a vulnerable adult pursuant to

1 subdivision (1)(c) of section 28-386; and

2 ~~(f)~~ (g) False imprisonment of a minor in the first degree
3 pursuant to section 28-314, except when the person is the parent
4 of the minor and was not convicted of any other offense in this
5 subdivision;

6 (7) Law enforcement agency includes a police department,
7 town marshal, county sheriff, and the Nebraska State Patrol;

8 (8) Other specified offense means an offense, or an
9 attempt, conspiracy, or solicitation to commit an offense, under
10 any of the following:

11 (a) Murder in the first degree pursuant to section
12 28-303;

13 (b) Murder in the second degree pursuant to section
14 28-304;

15 (c) Manslaughter pursuant to section 28-305; or

16 (d) Stalking pursuant to sections 28-311.02 to 28-311.05;

17 and

18 (9) Released means any release, parole, furlough, work
19 release, prerelease, or release in any other manner from a prison,
20 jail, or any other detention facility or institution.

21 Sec. 31. Section 42-1203, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 42-1203 For purposes of the Address Confidentiality Act:

24 (1) Abuse means causing or attempting to cause physical
25 harm, placing another person in fear of physical harm, or causing

1 another person to engage involuntarily in sexual activity by force,
2 threat of force, or duress, when committed by (a) a person against
3 his or her spouse, (b) a person against his or her former spouse,
4 (c) a person residing with the victim if such person and the victim
5 are or were in a dating relationship, (d) a person who formerly
6 resided with the victim if such person and the victim are or were
7 in a dating relationship, (e) a person against a parent of his
8 or her children, whether or not such person and the victim have
9 been married or resided together at any time, (f) a person against
10 a person with whom he or she is in a dating relationship, (g)
11 a person against a person with whom he or she formerly was in
12 a dating relationship, or (h) a person related to the victim by
13 consanguinity or affinity;

14 (2) Address means a residential street address, school
15 address, or work address of an individual as specified on the
16 individual's application to be a program participant;

17 (3) Dating relationship means an intimate or sexual
18 relationship;

19 (4) Program participant means a person certified as a
20 program participant under section 42-1204;

21 (5) Sexual assault has the same meaning as in section
22 28-319, 28-320, 28-320.01, or 28-386 or section 6 of this act; and

23 (6) Stalking has the same meaning as in sections
24 28-311.02 to 28-311.05.

25 Sec. 32. Section 71-1,206.14, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-1,206.14 Unless otherwise expressly stated, references
3 to licensed psychologists in the Nebraska Mental Health Commitment
4 Act, in the Sex Offender Commitment Act, in sections 71-1,206.01
5 to 71-1,206.35, and in section 44-513 shall mean only psychologists
6 licensed under section 71-1,206.15 or 71-1,206.17 or subdivisions
7 (2) and (3) of section 71-1,206.18 and shall not mean persons
8 holding a special license under subdivision (1) of section
9 71-1,206.18 or under section 71-1,206.19 or holding a provisional
10 license under sections 71-1,206.32 to 71-1,206.35.

11 Any reference to a person certified to practice clinical
12 psychology under the law in effect immediately prior to September
13 1, 1994, and any equivalent reference under the law of another
14 jurisdiction, including, but not limited to, certified clinical
15 psychologist, health care practitioner in psychology, or certified
16 health care provider, shall be construed to refer to a psychologist
17 licensed under the Uniform Licensing Law except for persons
18 licensed under subdivision (1) of section 71-1,206.18 or under
19 section 71-1,206.19 or holding a provisional license under sections
20 71-1,206.32 to 71-1,206.35.

21 Sec. 33. Section 71-1,206.18, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-1,206.18 Except as provided in this section, a person
24 licensed as a psychologist under the law in effect immediately
25 prior to September 1, 1994, but not certified in clinical

1 psychology:

2 (1) Shall be issued a special license to practice
3 psychology that continues existing requirements for supervision.
4 Any psychological practice that involves the diagnosis and
5 treatment of major mental and emotional disorders by a person
6 holding a special license shall be done under the supervision of
7 a licensed psychologist approved by the board in accordance with
8 regulations developed by the board. A psychologist licensed under
9 this subdivision shall not supervise mental health practitioners
10 or independently evaluate persons under the Nebraska Mental Health
11 Commitment Act or the Sex Offender Commitment Act. Supervisory
12 relationships shall be registered with the board by a notarized
13 letter signed by both the supervisor and supervisee. The letter
14 shall contain:

15 (a) A general description of the supervisee's practice
16 and the plan of supervision;

17 (b) A statement by the supervisor that he or she has
18 the necessary experience and training to supervise this area of
19 practice; and

20 (c) A statement by the supervisor that he or she accepts
21 the legal and professional responsibility for the supervisee's
22 practice with individuals having major mental and emotional
23 disorders.

24 Psychologists practicing with special licenses may
25 continue to use the title licensed psychologist but shall

1 disclose supervisory relationships to clients or patients for whom
2 supervision is required and to third-party payors when relevant.
3 Psychologists who wish to continue supervisory relationships
4 existing immediately prior to September 1, 1994, with qualified
5 physicians may do so if a letter as described in this subdivision
6 is received by the board within three months after such date;

7 (2) May apply for licensure before December 1, 1995,
8 by demonstrating that he or she has rendered psychological
9 diagnostic and treatment services as the major element of his or
10 her employment in an educational, correctional, or health care
11 setting for at least four years after licensure. A psychologist
12 demonstrating such experience shall be deemed to have met
13 equivalent requirements for licensure to those required by section
14 71-1,206.15 and shall be eligible for renewal of licensure in
15 accordance with the Uniform Licensing Law. For purposes of this
16 subdivision:

17 (a) Educational settings shall be those which are part
18 of a university or state college and those regulated by the State
19 Department of Education;

20 (b) Correctional settings shall be those under the
21 jurisdiction of the Department of Correctional Services; and

22 (c) Health care settings shall be hospitals, skilled
23 nursing facilities, clinics, and mental health centers licensed
24 by the Department of Health and Human Services Regulation and
25 Licensure and accredited by the Joint Commission on Hospital

1 Accreditation, by the Commission on Accreditation of Rehabilitation
2 Facilities, by the Department of Health and Human Services, or by
3 a similar or an equivalent accrediting body as determined by the
4 board.

5 The four-year period shall be continuous and represent
6 four years of full-time employment or a combination of half-time
7 and full-time employment that totals four years. For purposes
8 of this subdivision, year shall mean a calendar year except
9 for educational settings that may define the employment year in
10 nine-month increments. In no case shall an applicant receive four
11 years of credit for experience accrued in less than four calendar
12 years; or

13 (3) May apply for licensure within three months of
14 September 1, 1994, by demonstrating that he or she has been
15 employed as full-time faculty in a program of graduate education
16 in psychology approved by the American Psychological Association
17 for a period not less than five years after licensure. A
18 person demonstrating such employment shall be deemed to have
19 met equivalent requirements for licensure under section 71-1,206.15
20 and shall be eligible for renewal of licensure in accordance with
21 the Uniform Licensing Law.

22 A person licensed but not certified to practice clinical
23 psychology under the law in effect immediately prior to September
24 1, 1994, who has failed the examination for clinical certification
25 shall not be eligible to apply under subdivisions (2) and (3)

1 of this section. The board may deny an application under such
2 subdivisions if the applicant has had any action taken against him
3 or her for violations of the laws licensing psychologists by the
4 board or the boards of other jurisdictions. Such person shall be
5 granted a special license under subdivision (1) of this section.

6 Sec. 34. Section 71-1,206.34, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 71-1,206.34 A psychologist practicing with a provisional
9 license shall use the title Provisionally Licensed Psychologist.
10 A provisionally licensed psychologist shall disclose supervisory
11 relationships to clients or patients for whom supervision is
12 required and to third parties when relevant. A provisionally
13 licensed psychologist shall not supervise other mental health
14 professionals or independently evaluate persons under the Nebraska
15 Mental Health Commitment Act or the Sex Offender Commitment Act.

16 Sec. 35. Section 71-916, Revised Statutes Cumulative
17 Supplement, 2004, is amended to read:

18 71-916 (1) The Department of Health and Human Services
19 shall provide appropriate training to members and alternate members
20 of each mental health board and shall consult with consumer and
21 family advocacy groups in the development and presentation of such
22 training. Members and alternate members shall be reimbursed for any
23 actual and necessary expenses incurred in attending such training
24 in a manner and amount determined by the presiding judge of the
25 district court. No person shall remain on a mental health board

1 or be eligible for appointment or reappointment as a member or
2 alternate member of such board unless he or she has attended
3 and satisfactorily completed such training pursuant to rules and
4 regulations adopted and promulgated by the department.

5 (2) The Director of Health and Human Services shall
6 provide the mental health boards with blanks for warrants,
7 certificates, and other forms and printed copies of applicable
8 rules and regulations of the department that will enable the boards
9 to carry out their powers and duties under the Nebraska Mental
10 Health Commitment Act or the Sex Offender Commitment Act.

11 Sec. 36. Section 71-917, Revised Statutes Cumulative
12 Supplement, 2004, is amended to read:

13 71-917 The clerk of the district court appointed for
14 that purpose by a district judge of that district court judicial
15 district shall sign and issue all notices, appointments, warrants,
16 subpoenas, or other process required to be issued by the mental
17 health board and shall affix his or her seal as clerk of the
18 district court. The clerk shall file and preserve in his or
19 her office all papers connected with any proceedings of the
20 mental health board and all related notices, reports, and other
21 communications. The clerk shall keep minutes of all proceedings of
22 the board. All required notices, reports, and communications may
23 be sent by mail unless otherwise provided in the Nebraska Mental
24 Health Commitment Act or the Sex Offender Commitment Act. The fact
25 and date that such notices, reports, and communications have been

1 sent and received shall be noted on the proper record.

2 Sec. 37. Section 71-918, Revised Statutes Cumulative
3 Supplement, 2004, is amended to read:

4 71-918 Any person may voluntarily apply for admission
5 to any public or private hospital, other treatment facility, or
6 program for treatment of mental illness, ~~or~~ substance dependence,
7 or personality disorders in accordance with the regulations of such
8 facilities or programs governing such admissions. Any person who
9 is voluntarily admitted for such treatment shall be unconditionally
10 discharged from such hospital, treatment facility, or program not
11 later than forty-eight hours after delivery of his or her written
12 request to any official of such hospital, treatment facility, or
13 program, unless action is taken under the Nebraska Mental Health
14 Commitment Act or the Sex Offender Commitment Act to continue his
15 or her custody.

16 Sec. 38. Section 71-919, Revised Statutes Cumulative
17 Supplement, 2004, is amended to read:

18 71-919 (1) A law enforcement officer who has probable
19 cause to believe that a person is mentally ill and dangerous or
20 a dangerous sex offender and that the harm described in section
21 71-908 or subdivision (1) of section 87 of this act is likely to
22 occur before mental health board proceedings under the Nebraska
23 Mental Health Commitment Act or the Sex Offender Commitment Act
24 may be initiated to obtain custody of the person may take such
25 person into emergency protective custody, cause him or her to be

1 taken into emergency protective custody, or continue his or her
2 custody if he or she is already in custody. Such person shall
3 be admitted to ~~the nearest~~ an appropriate and available medical
4 facility, ~~and shall not be placed in a jail, or Department of~~
5 Correctional Services facility as provided in subsection (2) of
6 this section. Each county shall make arrangements with appropriate
7 ~~medical~~ facilities inside or outside the county for such purpose
8 and shall pay the cost of the emergency protective custody of
9 persons from such county in such facilities. A mental health
10 professional who has probable cause to believe that a person is
11 mentally ill and dangerous or a dangerous sex offender may cause
12 such person to be taken into custody and shall have a limited
13 privilege to hold such person until a law enforcement officer or
14 other authorized person arrives to take custody of such person.

15 (2)(a) A person taken into emergency protective custody
16 under this section shall be admitted to an appropriate and
17 available medical facility unless such person has a prior
18 conviction for a sex offense listed in section 29-4003.

19 (b) A person taken into emergency protective custody
20 under this section who has a prior conviction for a sex offense
21 listed in section 29-4003 shall be admitted to a jail or Department
22 of Correctional Services facility unless a medical or psychiatric
23 emergency exists for which treatment at a medical facility is
24 required. The person in emergency protective custody shall remain
25 at the medical facility until the medical or psychiatric emergency

1 has passed and it is safe to transport such person, at which time
2 the person shall be transferred to an available jail or Department
3 of Correctional Services facility.

4 ~~(2)~~ (3) Upon admission to a ~~medical~~ facility of a person
5 taken into emergency protective custody by a law enforcement
6 officer under this section, such officer shall execute a written
7 certificate prescribed and provided by the Director of Health and
8 Human Services. The certificate shall allege the officer's belief
9 that the person in custody is mentally ill and dangerous or a
10 dangerous sex offender and shall contain a summary of the person's
11 behavior supporting such allegations. A copy of such certificate
12 shall be immediately forwarded to the county attorney.

13 ~~(3)~~ (4) The administrator of the facility shall have
14 such person evaluated by a mental health professional as soon
15 as reasonably possible but not later than thirty-six hours after
16 admission. The mental health professional shall not be the mental
17 health professional who causes such person to be taken into custody
18 under this section and shall not be a member or alternate member
19 of the mental health board that will preside over any hearing
20 under the Nebraska Mental Health Commitment Act or the Sex Offender
21 Commitment Act with respect to such person. A person shall be
22 released from emergency protective custody after completion of such
23 evaluation unless the mental health professional determines, in
24 his or her clinical opinion, that such person is mentally ill and
25 dangerous or a dangerous sex offender.

1 Sec. 39. Section 71-942, Revised Statutes Cumulative
2 Supplement, 2004, is amended to read:

3 71-942 The Governor may appoint an agent to demand
4 of the executive authority of another state any person who is
5 located in such other state, who was receiving treatment at a
6 treatment facility or program in this state pursuant to the
7 Nebraska Mental Health Commitment Act, the Sex Offender Commitment
8 Act, or section 29-1823, 29-2203, or 29-3701 to 29-3704, and who
9 is absent without authorization from such treatment facility or
10 program. The demand shall be accompanied by a certified copy of
11 the order of commitment and a sworn statement by the administrator
12 of the treatment facility or program stating that (1) the person
13 is absent without authorization, (2) the administrator or program
14 director of such treatment facility or program believes that such
15 person is currently dangerous to himself, herself, or others, and
16 (3) the treatment facility or program is willing to accept the
17 person back for further treatment. This section does not prevent
18 extradition under the Uniform Criminal Extradition Act if such act
19 applies.

20 Sec. 40. Section 71-944, Revised Statutes Cumulative
21 Supplement, 2004, is amended to read:

22 71-944 A subject shall, in advance of the mental health
23 board hearing conducted under section 71-924 or section 64 of
24 this act, be entitled to written notice of the time and place
25 of such hearing, the reasons alleged for believing that he or

1 she is mentally ill and dangerous or a dangerous sex offender
2 requiring inpatient or outpatient treatment ordered by the mental
3 health board, and all rights to which such subject is entitled
4 under the Nebraska Mental Health Commitment Act or the Sex Offender
5 Commitment Act. The notice requirements shall be deemed satisfied
6 by personal service upon the subject of the summons or notice of
7 time and place of the hearing and copies of the petition and list
8 of rights required by sections 71-923 and 71-924 or sections 63 and
9 64 of this act. If the subject has counsel and if the physician or
10 mental health professional on the board determines that the nature
11 of the alleged mental disorder or personality disorder, if true, is
12 such that it is not prudent to disclose the label of the mental
13 disorder or personality disorder to the subject, then notice of
14 this label may be disclosed to the subject's counsel rather than to
15 the subject. When the subject does not have counsel, the subject
16 has a right to the information about his or her mental illness or
17 personality disorder, including its label. The clerk shall issue
18 the summons by order of the mental health board.

19 Sec. 41. Section 71-945, Revised Statutes Cumulative
20 Supplement, 2004, is amended to read:

21 71-945 A subject shall have the right to be represented
22 by counsel in all proceedings under the Nebraska Mental Health
23 Commitment Act or the Sex Offender Commitment Act. Counsel for a
24 subject who is in custody shall have full access to and the right
25 to consult privately with the subject at all reasonable times. As

1 soon as possible after a subject is taken into emergency protective
2 custody under section 71-919, or after the filing of a petition
3 under section 71-921 or section 61 of this act, whichever occurs
4 first, and before the mental health board hearing conducted under
5 section 71-924 or section 64 of this act, the board shall determine
6 whether the subject is indigent. If the subject is found to be
7 indigent, the board shall certify that fact to the district or
8 county court by causing to be delivered to the clerk of such
9 court a certificate for appointment of counsel as soon as possible
10 after a subject is taken into emergency protective custody or such
11 petition is filed.

12 Sec. 42. Section 71-946, Revised Statutes Cumulative
13 Supplement, 2004, is amended to read:

14 71-946 The appointment of counsel under section 71-945
15 shall be in accordance with the following procedures:

16 (1) Except in counties having a public defender, upon
17 the receipt from the mental health board of a certificate for
18 the appointment of counsel, the clerk of the district court shall
19 notify the district judge or the county judge of the county
20 in which the proceedings are pending of the receipt of such
21 certificate. The judge to whom the certificate was issued shall
22 appoint an attorney to represent the person concerning whom an
23 application is filed before the mental health board, whereupon the
24 clerk of the court shall enter upon the certificate the name of
25 the attorney appointed and deliver the certificate of appointment

1 of counsel to the mental health board. The clerk of the district
2 court or the clerk of the county court shall also keep and maintain
3 a record of all appointments which shall be conclusive evidence
4 thereof. All appointments of counsel under the Nebraska Mental
5 Health Commitment Act or the Sex Offender Commitment Act may be
6 made at any time or place in the state; and

7 (2) In counties having a public defender, upon receipt
8 from the mental health board of a certificate for the appointment
9 of counsel, the clerk of the district court shall notify the public
10 defender of his or her appointment to represent the person and
11 shall enter upon the certificate the name of the attorney appointed
12 and deliver the certificate of appointment of counsel to the mental
13 health board.

14 Sec. 43. Section 71-947, Revised Statutes Cumulative
15 Supplement, 2004, is amended to read:

16 71-947 Counsel appointed as provided in subdivision (1)
17 of section 71-946 shall apply to the court in which his or her
18 appointment is recorded for fees for services performed. Such
19 counsel may also apply to the court to secure separate professional
20 examination of the person for whom counsel was appointed and
21 shall be reimbursed for costs incurred in securing such separate
22 examination or examinations or in having other professional persons
23 as witnesses before the mental health board. The court, upon
24 hearing the application, shall fix reasonable fees, including
25 reimbursement of costs incurred. The county board of the county

1 in which the application was filed shall allow the account, bill,
2 or claim presented by the attorney for services performed under
3 the Nebraska Mental Health Commitment Act or the Sex Offender
4 Commitment Act in the amount determined by the court. No such
5 account, bill, or claim shall be allowed by the county board until
6 the amount thereof has been determined by the court.

7 Sec. 44. Section 71-948, Revised Statutes Cumulative
8 Supplement, 2004, is amended to read:

9 71-948 A subject or the subject's counsel shall have
10 the right to employ mental health professionals of his or her
11 choice to independently evaluate the subject's mental condition
12 and testify for and otherwise assist the subject in proceedings
13 under the Nebraska Mental Health Commitment Act or the Sex Offender
14 Commitment Act. If the subject is indigent, only one such person
15 may be employed except with leave of the mental health board.
16 Any person so employed by a subject determined by the board to
17 be indigent, except a subject represented by the public defender,
18 shall apply to the board for expenses reasonably necessary to such
19 person's effective assistance of the subject and for reasonable
20 fees for services performed by such person in assisting the
21 subject. The board shall then fix reasonable fees and expenses, and
22 the county board shall allow payment to such person in the full
23 amount fixed by the board.

24 Sec. 45. Section 71-949, Revised Statutes Cumulative
25 Supplement, 2004, is amended to read:

1 71-949 Counsel for a subject, upon request made to the
2 county attorney at any time after the subject has been taken
3 into emergency protective custody under the Nebraska Mental Health
4 Commitment Act or the Sex Offender Commitment Act, or after the
5 filing of a petition under section 71-921 or section 61 of this
6 act, whichever occurs first, shall have the right to be provided
7 with (1) the names of all witnesses expected to testify in support
8 of the petition, (2) knowledge of the location and access at
9 reasonable times for review or copying of all written documents
10 including reports of peace officers, law enforcement agencies,
11 and mental health professionals, (3) access to all other tangible
12 objects in the possession of the county attorney or to which
13 the county attorney has access, and (4) written records of any
14 treatment facility or mental health professional which or who has
15 at any time treated the subject for mental illness, ~~or~~ substance
16 dependence, or a personality disorder, which records are relevant
17 to the issues of whether the subject is mentally ill and dangerous
18 or a dangerous sex offender and, if so, what treatment disposition
19 should be ordered by the mental health board. The board may order
20 further discovery at its discretion. The county attorney shall have
21 a reciprocal right to discover items and information comparable
22 to those first discovered by the subject. The county court and
23 district court shall have the power to rule on objections to
24 discovery in matters which are not self-activating. The right of
25 appeal from denial of discovery shall be at the time of the

1 conclusion of the mental health board hearing.

2 Sec. 46. Section 71-954, Revised Statutes Cumulative
3 Supplement, 2004, is amended to read:

4 71-954 A subject shall have the right at a hearing held
5 under the Nebraska Mental Health Commitment Act or the Sex Offender
6 Commitment Act to confront and cross-examine adverse witnesses
7 and evidence equivalent to the rights of confrontation granted by
8 Amendments VI and XIV of the United States Constitution and Article
9 I, section 11, of the Constitution of Nebraska.

10 Sec. 47. Section 71-956, Revised Statutes Cumulative
11 Supplement, 2004, is amended to read:

12 71-956 A subject shall be entitled to written statements
13 by the mental health board as to the evidence relied on and reasons
14 (1) for finding clear and convincing evidence at the subject's
15 hearing that he or she is mentally ill and dangerous or a dangerous
16 sex offender and that neither voluntary hospitalization nor other
17 treatment alternatives less restrictive of the subject's liberty
18 than inpatient or outpatient treatment ordered by the mental health
19 board are available or would suffice to prevent the harm described
20 in section 71-908 or subdivision (1) of section 87 of this act and
21 (2) for choosing the particular treatment specified by its order
22 of final disposition. The mental health board shall make similar
23 written findings when it orders a subject held in custody rather
24 than released on conditions pending hearings to determine whether
25 he or she is mentally ill and dangerous or a dangerous sex offender

1 and in need of treatment ordered by the mental health board or
2 pending the entry of an order of final disposition under section
3 71-925 or section 65 of this act.

4 Sec. 48. Section 71-957, Revised Statutes Cumulative
5 Supplement, 2004, is amended to read:

6 71-957 All proceedings held under the Nebraska Mental
7 Health Commitment Act or the Sex Offender Commitment Act shall
8 be of record, and all oral proceedings shall be reported verbatim
9 by either a qualified shorthand reporter or by tape-recording
10 equipment equivalent in quality to that required in county courts
11 by section 25-2732. The written findings of the mental health board
12 shall be part of the subject's records and shall be available to
13 the parties in the case and to the treatment facility where the
14 subject is receiving treatment pursuant to a commitment order of
15 the mental health board under section 71-925 or section 65 of
16 this act. Any qualified shorthand reporter who reports proceedings
17 presided over by a board or otherwise than in his or her capacity
18 as an official district court stenographic reporter shall apply to
19 the court for reasonable expenses and fees for services performed
20 in such hearings. The court shall fix reasonable expenses and fees,
21 and the county board shall allow payment to the reporter in the
22 full amount fixed by the court.

23 Sec. 49. Section 71-958, Revised Statutes Cumulative
24 Supplement, 2004, is amended to read:

25 71-958 Any qualified mental health professional, upon

1 being authorized by the administrator of the treatment facility
2 having custody of the subject, may provide appropriate medical
3 treatment for the subject while in custody, except that a subject
4 shall not be subjected to such quantities of medication or other
5 treatment within such period of time prior to any hearing held
6 under the Nebraska Mental Health Commitment Act or the Sex Offender
7 Commitment Act as will substantially impair his or her ability to
8 assist in his or her defense at such hearing.

9 Sec. 50. Section 71-959, Revised Statutes Cumulative
10 Supplement, 2004, is amended to read:

11 71-959 A subject in custody or receiving treatment under
12 the Nebraska Mental Health Commitment Act or the Sex Offender
13 Commitment Act has the right:

14 (1) To be considered legally competent for all purposes
15 unless he or she has been declared legally incompetent. The mental
16 health board shall not have the power to declare an individual
17 incompetent;

18 (2) To receive prompt and adequate evaluation and
19 treatment for mental illness, personality disorders, and physical
20 ailments and to participate in his or her treatment planning
21 activities to the extent determined to be appropriate by the mental
22 health professional in charge of the subject's treatment;

23 (3) To refuse treatment medication, except (a) in an
24 emergency, such treatment medication as is essential in the
25 judgment of the mental health professional in charge of such

1 treatment to prevent the subject from causing injury to himself,
2 herself, or others or (b) following a hearing and order of a mental
3 health board, such treatment medication as will substantially
4 improve his or her mental illness or personality disorder or reduce
5 the risk posed to the public by a dangerous sex offender;

6 (4) To communicate freely with any other person by sealed
7 mail, personal visitation, and private telephone conversations;

8 (5) To have reasonably private living conditions,
9 including private storage space for personal belongings;

10 (6) To engage or refuse to engage in religious worship
11 and political activity;

12 (7) To be compensated for his or her labor in accordance
13 with the federal Fair Labor Standards Act, 29 U.S.C. 206, as such
14 section existed on January 1, 2004;

15 (8) To have access to a patient grievance procedure; and

16 (9) To file, either personally or by counsel, petitions
17 or applications for writs of habeas corpus for the purpose of
18 challenging the legality of his or her custody or treatment.

19 Sec. 51. Section 71-960, Revised Statutes Cumulative
20 Supplement, 2004, is amended to read:

21 71-960 A subject may waive any of the proceedings
22 or rights incident to proceedings granted him or her under
23 the Nebraska Mental Health Commitment Act or the Sex Offender
24 Commitment Act by failing to request any right expressly required
25 to be requested but, in the case of all other such rights, only

1 if the record reflects that such waiver was made personally,
2 intelligently, knowingly, understandingly, and voluntarily by the
3 subject and such subject's legal guardian or conservator, if any.
4 Such rights may otherwise be denied only by a mental health board
5 or court order for good cause shown after notice to the subject,
6 the subject's counsel, and such subject's guardian or conservator,
7 if any, and an opportunity to be heard. If the mental health
8 board determines that the subject is not able to waive his or her
9 rights under this section, it shall be up to the discretion of the
10 subject's counsel to exercise such rights. When the subject is not
11 represented by counsel, the rights may not be waived.

12 Sec. 52. Section 71-961, Revised Statutes Cumulative
13 Supplement, 2004, is amended to read:

14 71-961 (1) All records kept on any subject shall remain
15 confidential except as otherwise provided by law. Such records
16 shall be accessible to (a) the subject, except as otherwise
17 provided in subsection (2) of this section, (b) the subject's legal
18 counsel, (c) the subject's guardian or conservator, if any, (d)
19 the mental health board having jurisdiction over the subject, (e)
20 persons authorized by an order of a judge or court, (f) persons
21 authorized by written permission of the subject, (g) agents or
22 employees of the Department of Health and Human Services Regulation
23 and Licensure upon delivery of a subpoena from the department
24 in connection with a licensing or licensure investigation by the
25 department, ~~or~~ (h) individuals authorized to receive notice of the

1 release of a sex offender pursuant to section 86 of this act,
2 (i) the Nebraska State Patrol or the Department of Health and
3 Human Services pursuant to section 69-2409.01, or (j) the Office
4 of Parole Administration if the subject meets the requirements for
5 lifetime community supervision pursuant to section 89 of this act.

6 (2) Upon application by the county attorney or by the
7 administrator of the treatment facility where the subject is in
8 custody and upon a showing of good cause therefor, a judge of
9 the district court of the county where the mental health board
10 proceedings were held or of the county where the treatment facility
11 is located may order that the records not be made available to
12 the subject if, in the judgment of the court, the availability of
13 such records to the subject will adversely affect his or her mental
14 illness or personality disorder and the treatment thereof.

15 (3) When a subject is absent without authorization from
16 a treatment facility or program described in section 71-939 or
17 section 79 of this act and is considered to be dangerous to others,
18 the subject's name and description and a statement that the subject
19 is believed to be considered dangerous to others may be disclosed
20 in order to aid in the subject's apprehension and to warn the
21 public of such danger.

22 Sec. 53. Section 71-962, Revised Statutes Cumulative
23 Supplement, 2004, is amended to read:

24 71-962 Any person who willfully (1) files or causes to be
25 filed a certificate or petition under the Nebraska Mental Health

1 Commitment Act or the Sex Offender Commitment Act, knowing any of
2 the allegations thereof to be false, (2) deprives a subject of any
3 of the rights granted the subject by ~~the~~ either act or section
4 83-390, or (3) breaches the confidentiality of records required
5 by section 71-961 shall be guilty of a Class II misdemeanor in
6 addition to any civil liability which he or she may incur for such
7 ~~aets~~ actions.

8 Sec. 54. Section 71-1128, Revised Statutes Supplement,
9 2005, is amended to read:

10 71-1128 (1) If at any time it appears that the subject
11 no longer poses a threat of harm to others, any party may file a
12 motion for a review hearing to be held as soon as practicable. The
13 party filing the motion under this subsection shall have the burden
14 of showing by a preponderance of the evidence that the subject
15 no longer poses a threat of harm to others. If it is shown that
16 the subject no longer poses a threat of harm to others, the court
17 shall enter an order dismissing the case and immediately release
18 the subject.

19 (2) If at any time it appears that (a) the plan submitted
20 under section 71-1124 or 71-1127 is not sufficient to protect
21 society or the subject or (b) the circumstances upon which the
22 plan was based have changed significantly, any party may file a
23 motion, to be granted for good cause shown, for a review hearing
24 to be held as soon as practicable. The party filing the motion
25 under this subsection shall have the burden of showing by clear and

1 convincing evidence that the court-ordered custody and treatment of
2 the subject should be modified or vacated.

3 (3) Upon the filing of a motion for a review hearing
4 pursuant to this section, the department shall immediately provide
5 notice to the Attorney General and the county attorney who filed
6 a petition under section 71-1117 if the proceeding by which the
7 subject is placed in court-ordered custody included evidence of
8 a sex offense as defined in section 87 of this act or if any
9 prior proceedings resulting in a civil commitment or court-ordered
10 custody included evidence of a sex offense as defined in section 87
11 of this act.

12 Sec. 55. When sentencing a person convicted of an offense
13 which requires a civil commitment evaluation pursuant to section 88
14 of this act, the sentencing court shall:

15 (1) Provide written notice to the defendant that a civil
16 commitment evaluation is required prior to his or her release from
17 incarceration;

18 (2) Require the defendant to read and sign a form
19 stating that the defendant has been informed that a civil
20 commitment evaluation is required prior to his or her release
21 from incarceration; and

22 (3) Retain a copy of the written notification signed by
23 the defendant.

24 Sec. 56. Section 71-6908, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 71-6908 The Legislature recognizes and hereby declares
2 that some teenage pregnancies are a direct or indirect result
3 of family or foster family abuse, neglect, or sexual assault.
4 The Legislature further recognizes that the actions of abuse,
5 neglect, or sexual assault are crimes regardless of whether they
6 are committed by strangers, acquaintances, or family members. The
7 Legislature further recognizes the need for a parent or guardian
8 notification bypass system as set out in section 71-6903 due
9 to the number of unhealthy family environments in which some
10 pregnant women reside. The Legislature encourages county attorneys
11 to prosecute persons accused of committing acts of abuse, incest,
12 neglect, or sexual assault pursuant to sections 28-319, 28-320,
13 28-320.01, 28-703, and 28-707 and section 6 of this act even if
14 the alleged crime is committed by a biological or adoptive parent,
15 foster parent, or other biological, adoptive, or foster family
16 member.

17 Sec. 57. Sections 57 to 82 of this act shall be known and
18 may be cited as the Sex Offender Commitment Act.

19 Sec. 58. The purpose of the Sex Offender Commitment Act
20 is to provide for the court-ordered treatment of sex offenders who
21 have completed their sentences but continue to pose a threat of
22 harm to others. It is the public policy of the State of Nebraska
23 that dangerous sex offenders be encouraged to obtain voluntary
24 treatment. If voluntary treatment is not obtained, such persons
25 shall be subject to involuntary custody and treatment only after

1 mental health board proceedings as provided by the Sex Offender
2 Commitment Act. Such persons shall be subjected to emergency
3 protective custody under limited conditions and for a limited
4 period of time.

5 Sec. 59. For purposes of the Sex Offender Commitment Act:

6 (1) The definitions found in sections 71-905, 71-906,
7 71-907, 71-910, and 71-911 and section 87 of this act apply;

8 (2) Administrator means the administrator or other chief
9 administrative officer of a treatment facility or his or her
10 designee;

11 (3) Outpatient treatment means treatment ordered by a
12 mental health board directing a subject to comply with specified
13 outpatient treatment requirements, including, but not limited to,
14 (a) taking prescribed medication, (b) reporting to a mental health
15 professional or treatment facility for treatment or for monitoring
16 of the subject's condition, or (c) participating in individual
17 or group therapy or educational, rehabilitation, residential, or
18 vocational programs;

19 (4) Subject means any person concerning whom (a) a
20 certificate has been filed under section 60 of this act, (b) a
21 certificate has been filed under section 71-919 and such person
22 is held pursuant to subdivision (2)(b) of section 71-919, or (c)
23 a petition has been filed under the Sex Offender Commitment Act.
24 Subject does not include any person under eighteen years of age
25 unless such person is an emancipated minor; and

1 (5) Treatment facility means a facility which provides
2 services for persons who are dangerous sex offenders.

3 Sec. 60. (1) A mental health professional who, upon
4 evaluation of a person admitted for emergency protective custody
5 under section 71-919, determines that such person is a dangerous
6 sex offender shall execute a written certificate as provided in
7 subsection (2) of this section not later than twenty-four hours
8 after the completion of such evaluation. A copy of such certificate
9 shall be immediately forwarded to the county attorney.

10 (2) The certificate shall be in writing and shall include
11 the following information:

12 (a) The subject's name and address, if known;

13 (b) The name and address of the subject's spouse, legal
14 counsel, guardian or conservator, and next of kin, if known;

15 (c) The name and address of anyone providing psychiatric
16 or other care or treatment to the subject, if known;

17 (d) The name and address of any other person who may have
18 knowledge of the subject's mental illness or personality disorder
19 who may be called as a witness at a mental health board hearing
20 with respect to the subject, if known;

21 (e) The name and address of the medical facility in which
22 the subject is being held for emergency protective custody and
23 evaluation;

24 (f) The name and work address of the certifying mental
25 health professional;

1 (g) A statement by the certifying mental health
2 professional that he or she has evaluated the subject since
3 the subject was admitted for emergency protective custody and
4 evaluation; and

5 (h) A statement by the certifying mental health
6 professional that, in his or her clinical opinion, the subject is a
7 dangerous sex offender and the clinical basis for such opinion.

8 Sec. 61. (1) Any person who believes that another person
9 is a dangerous sex offender may communicate such belief to the
10 county attorney. The filing of a certificate by a law enforcement
11 officer under section 71-919 shall be sufficient to communicate
12 such belief. If the county attorney concurs that such person is a
13 dangerous sex offender and that neither voluntary hospitalization
14 nor other treatment alternatives less restrictive of the subject's
15 liberty than inpatient or outpatient treatment ordered by a mental
16 health board is available or would suffice to prevent the harm
17 described in subdivision (1) of section 87 of this act, the county
18 attorney shall file a petition as provided in this section.

19 (2) The petition shall be filed with the clerk of the
20 district court in any county within: (a) The judicial district in
21 which the subject is located; (b) the judicial district in which
22 the alleged behavior of the subject occurred which constitutes the
23 basis for the petition; or (c) another judicial district in the
24 State of Nebraska, if authorized, upon good cause shown, by a
25 district judge of the judicial district in which the subject is

1 located. In such event, all proceedings before the mental health
2 board shall be conducted by the mental health board serving such
3 other county and all costs relating to such proceedings shall be
4 paid by the county of residence of the subject. In the order
5 transferring such cause to another county, the judge shall include
6 such directions as are reasonably necessary to protect the rights
7 of the subject.

8 (3) The petition shall be in writing and shall include
9 the following information:

10 (a) The subject's name and address, if known;

11 (b) The name and address of the subject's spouse, legal
12 counsel, guardian or conservator, and next of kin, if known;

13 (c) The name and address of anyone providing psychiatric
14 or other care or treatment to the subject, if known;

15 (d) A statement that the county attorney has probable
16 cause to believe that the subject of the petition is a dangerous
17 sex offender;

18 (e) A statement that the beliefs of the county attorney
19 are based on specific behavior, acts, criminal convictions,
20 attempts, or threats which shall be described in detail in the
21 petition; and

22 (f) The name and address of any other person who may have
23 knowledge of the subject's mental illness or personality disorder
24 and who may be called as a witness at a mental health board hearing
25 with respect to the subject, if known.

1 Sec. 62. (1) Mental health board proceedings shall be
2 deemed to have commenced upon the earlier of (a) the filing of
3 a petition under section 61 of this act or (b) notification by
4 the county attorney to the law enforcement officer who took the
5 subject into emergency protective custody under section 71-919 or
6 the administrator of the treatment facility having charge of the
7 subject of the intention of the county attorney to file such
8 petition. The county attorney shall file such petition as soon as
9 reasonably practicable after such notification.

10 (2) A petition filed by the county attorney under section
11 61 of this act may contain a request for the emergency protective
12 custody and evaluation of the subject prior to commencement of a
13 mental health board hearing pursuant to such petition with respect
14 to the subject. Upon receipt of such request and upon a finding
15 of probable cause to believe that the subject is a dangerous sex
16 offender as alleged in the petition, the court or chairperson
17 of the mental health board may issue a warrant directing the
18 sheriff to take custody of the subject. If the subject is already
19 in emergency protective custody under a certificate filed under
20 section 71-919, a copy of such certificate shall be filed with
21 the petition. The subject in such custody shall be held in an
22 appropriate and available medical facility, jail, or Department
23 of Correctional Services facility. A dangerous sex offender shall
24 not be admitted to a medical facility for emergency protective
25 custody unless a medical or psychiatric emergency exists requiring

1 treatment not available at a jail or correctional facility. Each
2 county shall make arrangements with appropriate facilities inside
3 or outside the county for such purpose and shall pay the cost of
4 the emergency protective custody of persons from such county in
5 such facilities.

6 (3) The petition and all subsequent pleadings and filings
7 in the case shall be entitled In the Interest of ,
8 Alleged to be a Dangerous Sex Offender. The county attorney may
9 dismiss the petition at any time prior to the commencement of the
10 hearing of the mental health board under section 64 of this act,
11 and upon such motion by the county attorney, the mental health
12 board shall dismiss the petition.

13 Sec. 63. Upon the filing of the petition under section 61
14 of this act, the clerk of the district court shall cause a summons
15 fixing the time and place for a hearing to be prepared and issued
16 to the sheriff for service. The sheriff shall personally serve
17 upon the subject and the subject's legal guardian or custodian, if
18 any, the summons and copies of the petition, the list of rights
19 provided by sections 71-943 to 71-960, and a list of the names,
20 addresses, and telephone numbers of mental health professionals in
21 the immediate vicinity by whom the subject may be evaluated prior
22 to his or her hearing. The summons shall fix a time for the hearing
23 within seven calendar days after the subject has been taken into
24 emergency protective custody. The failure of a subject to appear
25 as required under this section shall constitute grounds for the

1 issuance by the mental health board of a warrant for his or her
2 custody.

3 Sec. 64. A hearing shall be held by the mental health
4 board to determine whether there is clear and convincing evidence
5 that the subject is a dangerous sex offender as alleged in the
6 petition. At the commencement of the hearing, the board shall
7 inquire whether the subject has received a copy of the petition and
8 list of rights accorded him or her by sections 71-943 to 71-960
9 and whether he or she has read and understood them. The board
10 shall explain to the subject any part of the petition or list of
11 rights which he or she has not read or understood. The board shall
12 inquire of the subject whether he or she admits or denies the
13 allegations of the petition. If the subject admits the allegations,
14 the board shall proceed to enter a treatment order pursuant to
15 section 65 of this act. If the subject denies the allegations of
16 the petition, the board shall proceed with a hearing on the merits
17 of the petition.

18 Sec. 65. (1) The state has the burden to prove by
19 clear and convincing evidence that (a) the subject is a dangerous
20 sex offender and (b) neither voluntary hospitalization nor other
21 treatment alternatives less restrictive of the subject's liberty
22 than inpatient or outpatient treatment ordered by the mental health
23 board are available or would suffice to prevent the harm described
24 in subdivision (1) of section 87 of this act.

25 (2) If the mental health board finds that the subject is

1 not a dangerous sex offender, the board shall dismiss the petition
2 and order the unconditional discharge of the subject.

3 (3) If the mental health board finds that the subject
4 is a dangerous sex offender but that voluntary hospitalization
5 or other treatment alternatives less restrictive of the subject's
6 liberty than treatment ordered by the mental health board are
7 available and would suffice to prevent the harm described in
8 subdivision (1) of section 87 of this act, the board shall (a)
9 dismiss the petition and order the unconditional discharge of the
10 subject or (b) suspend further proceedings for a period of up to
11 ninety days to permit the subject to obtain voluntary treatment.
12 At any time during such ninety-day period, the county attorney may
13 apply to the board for reinstatement of proceedings with respect
14 to the subject, and after notice to the subject, the subject's
15 counsel, and the subject's legal guardian or conservator, if any,
16 the board shall hear the application. If no such application is
17 filed or pending at the conclusion of such ninety-day period,
18 the board shall dismiss the petition and order the unconditional
19 discharge of the subject.

20 (4) If the subject admits the allegations of the petition
21 or the mental health board finds that the subject is a dangerous
22 sex offender and that neither voluntary hospitalization nor other
23 treatment alternatives less restrictive of the subject's liberty
24 than inpatient or outpatient treatment ordered by the board are
25 available or would suffice to prevent the harm described in

1 subdivision (1) of section 87 of this act, the board shall, within
2 forty-eight hours, (a) order the subject to receive outpatient
3 treatment or (b) order the subject to receive inpatient treatment.
4 If the subject is ordered by the board to receive inpatient
5 treatment, the order shall commit the subject to the custody of the
6 Department of Health and Human Services for such treatment.

7 (5) A subject who (a) is ordered by the mental health
8 board to receive inpatient treatment and (b) has not yet been
9 admitted for such treatment pursuant to such order may petition for
10 a rehearing by the mental health board based on improvement in the
11 subject's condition such that inpatient treatment ordered by the
12 board would no longer be necessary or appropriate.

13 (6) A treatment order by the mental health board
14 under this section shall represent the appropriate available
15 treatment alternative that imposes the least possible restraint
16 upon the liberty of the subject. The board shall consider
17 all treatment alternatives, including any treatment program or
18 conditions suggested by the subject, the subject's counsel, or
19 other interested person. Inpatient hospitalization or custody shall
20 only be considered as a treatment alternative of last resort.
21 The county attorney and the subject may jointly offer a proposed
22 treatment order for adoption by the board. The board may enter the
23 proposed order without a full hearing.

24 (7) The mental health board may request the assistance of
25 the Department of Health and Human Services or any other person or

1 public or private entity to advise the board prior to the entry
2 of a treatment order pursuant to this section and may require
3 the subject to submit to reasonable psychiatric and psychological
4 evaluation to assist the board in preparing such order. Any mental
5 health professional conducting such evaluation at the request of
6 the mental health board shall be compensated by the county or
7 counties served by such board at a rate determined by the district
8 judge and reimbursed for mileage at the rate provided in section
9 81-1176.

10 Sec. 66. (1) At the conclusion of a mental health board
11 hearing under section 64 of this act and prior to the entry of
12 a treatment order by the board under section 65 of this act,
13 the board may (a) order that the subject be retained in custody
14 until the entry of such order and the subject may be admitted for
15 treatment pursuant to such order or (b) order the subject released
16 from custody under such conditions as the board deems necessary
17 and appropriate to prevent the harm described in subdivision (1)
18 of section 87 of this act and to assure the subject's appearance
19 at a later disposition hearing by the board. A subject shall
20 be retained in custody under this section at an appropriate and
21 available medical facility, jail, or Department of Correctional
22 Services facility. A dangerous sex offender shall not be admitted
23 to a medical facility for emergency protective custody unless a
24 medical or psychiatric emergency exists requiring treatment not
25 available at a jail or correctional facility. Each county shall

1 make arrangements with appropriate facilities inside or outside the
2 county for such purpose and shall pay the cost of the emergency
3 protective custody of persons from such county in such facilities.

4 (2) A subject who has been ordered to receive inpatient
5 or outpatient treatment by a mental health board may be provided
6 treatment while being retained in emergency protective custody and
7 pending admission of the subject for treatment pursuant to such
8 order.

9 Sec. 67. If the mental health board finds the subject
10 to be a dangerous sex offender and commits the subject to the
11 custody of the Department of Health and Human Services to receive
12 inpatient treatment, the department shall secure placement of the
13 subject in an appropriate inpatient treatment facility to receive
14 such treatment. The board shall issue a warrant authorizing the
15 administrator of such treatment facility to receive and keep the
16 subject as a patient. The warrant shall state the findings of
17 the board and the legal settlement of the subject, if known,
18 or any available information relating thereto. Such warrant shall
19 shield every official and employee of the treatment facility
20 against all liability to prosecution of any kind on account of
21 the reception and detention of the subject if the detention is
22 otherwise in accordance with the Sex Offender Commitment Act, rules
23 and regulations adopted and promulgated under the act, and policies
24 of the treatment facility.

25 Sec. 68. When an order of a mental health board requires

1 inpatient treatment of a subject within a treatment facility, the
2 warrant filed under section 67 of this act, together with the
3 findings of the mental health board, shall be delivered to the
4 sheriff of the county who shall execute such warrant by conveying
5 and delivering the warrant, the findings, and the subject to the
6 treatment facility. The administrator, over his or her signature,
7 shall acknowledge the delivery on the original warrant which the
8 sheriff shall return to the clerk of the district court with
9 his or her costs and expenses endorsed thereon. If neither the
10 sheriff nor deputy sheriff is available to execute the warrant,
11 the chairperson of the mental health board may appoint some other
12 suitable person to execute the warrant. Such person shall take and
13 subscribe an oath or affirmation to faithfully discharge his or her
14 duty and shall be entitled to the same fees as the sheriff. The
15 sheriff, deputy sheriff, or other person appointed by the mental
16 health board may take with him or her such assistance as may
17 be required to execute the warrant. No female subject shall be
18 taken to a treatment facility without being accompanied by another
19 female or relative of the subject. The administrator in his or
20 her acknowledgment of delivery shall record whether any person
21 accompanied the subject and the name of such person.

22 Sec. 69. (1) If a mental health board issues a warrant
23 for the admission or return of a subject to a treatment facility
24 and funds to pay the expenses thereof are needed in advance, the
25 board shall estimate the probable expense of conveying the subject

1 to the treatment facility, including the cost of any assistance
2 that might be required, and shall submit such estimate to the
3 county clerk of the county in which such person is located. The
4 county clerk shall certify the estimate and shall issue an order
5 on the county treasurer in favor of the sheriff or other person
6 entrusted with the execution of the warrant.

7 (2) The sheriff or other person executing the warrant
8 shall include in his or her return a statement of expenses actually
9 incurred, including any excess or deficiency. Any excess from the
10 amount advanced for such expenses under subsection (1) of this
11 section shall be paid to the county treasurer, taking his or her
12 receipt therefor, and any deficiency shall be obtained by filing a
13 claim with the county board. If no funds are advanced, the expenses
14 shall be certified on the warrant and paid when returned.

15 (3) The sheriff shall be reimbursed for mileage at the
16 rate provided in section 33-117 for conveying a subject to a
17 treatment facility under this section. For other services performed
18 under the Sex Offender Commitment Act, the sheriff shall receive
19 the same fees as for like services in other cases.

20 (4) All compensation and expenses provided for in this
21 section shall be allowed and paid out of the treasury of the county
22 by the county board.

23 Sec. 70. The subject of a petition or the county attorney
24 may appeal a treatment order of the mental health board under
25 section 65 of this act to the district court. Such appeals shall

1 be de novo on the record. A final order of the district court
2 may be appealed to the Court of Appeals in accordance with the
3 procedure in criminal cases. The final judgment of the court shall
4 be certified to and become a part of the records of the mental
5 health board with respect to the subject.

6 Sec. 71. (1) Any treatment order entered by a mental
7 health board under section 65 of this act shall include directions
8 for (a) the preparation and implementation of an individualized
9 treatment plan for the subject and (b) documentation and reporting
10 of the subject's progress under such plan.

11 (2) The individualized treatment plan shall contain a
12 statement of (a) the nature of the subject's mental illness
13 or personality disorder, (b) the least restrictive treatment
14 alternative consistent with the clinical diagnosis of the subject,
15 and (c) intermediate and long-term treatment goals for the subject
16 and a projected timetable for the attainment of such goals.

17 (3) A copy of the individualized treatment plan shall
18 be filed with the mental health board for review and inclusion
19 in the subject's file and served upon the county attorney, the
20 subject, the subject's counsel, and the subject's legal guardian or
21 conservator, if any, within five working days after the entry of
22 the board's order. Treatment shall be commenced within two working
23 days after preparation of the plan.

24 (4) The subject shall be entitled to know the contents of
25 the individualized treatment plan and what the subject must do in

1 order to meet the requirements of such plan.

2 (5) The subject shall be notified by the mental health
3 board when the mental health board has changed the treatment order
4 or has ordered the discharge of the subject from commitment.

5 Sec. 72. The person or entity designated by the mental
6 health board under section 71 of this act to prepare and oversee
7 the subject's individualized treatment plan shall submit periodic
8 reports to the mental health board of the subject's progress
9 under such plan and any modifications to the plan. The mental
10 health board may distribute copies of such reports to other
11 interested parties as permitted by law. With respect to a subject
12 ordered by the mental health board to receive inpatient treatment,
13 such initial report shall be filed with the mental health board
14 for review and inclusion in the subject's file and served upon
15 the county attorney, the subject, the subject's counsel, and
16 the subject's legal guardian or conservator, if any, no later
17 than ten days after submission of the subject's individualized
18 treatment plan. With respect to each subject committed by the
19 mental health board, such reports shall be so filed and served no
20 less frequently than every ninety days for a period of one year
21 following submission of the subject's individualized treatment plan
22 and every six months thereafter.

23 Sec. 73. (1) Any provider of outpatient treatment to a
24 subject ordered by a mental health board to receive such treatment
25 shall report to the board and to the county attorney if (a) the

1 subject is not complying with his or her individualized treatment
2 plan, (b) the subject is not following the conditions set by the
3 mental health board, (c) the treatment plan is not effective, or
4 (d) there has been a significant change in the subject's mental
5 illness or personality disorder or the level of risk posed to
6 the public. Such report may be transmitted by facsimile, but the
7 original of the report shall be mailed to the board and the
8 county attorney no later than twenty-four hours after the facsimile
9 transmittal.

10 (2)(a) Upon receipt of such report, the county attorney
11 shall have the matter investigated to determine whether there is a
12 factual basis for the report.

13 (b) If the county attorney determines that there is
14 no factual basis for the report or that no further action is
15 warranted, he or she shall notify the board and the treatment
16 provider and take no further action.

17 (c) If the county attorney determines that there is a
18 factual basis for the report and that intervention by the mental
19 health board is necessary to protect the subject or others, the
20 county attorney may file a motion for reconsideration of the
21 conditions set forth by the board and have the matter set for
22 hearing.

23 (d) The county attorney may apply for a warrant to take
24 immediate custody of the subject pending a rehearing by the board
25 under subdivision (c) of this subsection if the county attorney

1 has reasonable cause to believe that the subject poses a threat of
2 danger to himself or herself or others prior to such rehearing. The
3 application for a warrant shall be supported by affidavit or sworn
4 testimony by the county attorney, a mental health professional,
5 or any other informed person. The application for a warrant and
6 the supporting affidavit may be filed with the board by facsimile,
7 but the original shall be filed with the board not later than
8 three days after the facsimile transmittal, excluding holidays and
9 weekends. Sworn testimony in support of the warrant application may
10 be taken over the telephone at the discretion of the board.

11 Sec. 74. The mental health board shall, upon motion of
12 the county attorney, or may, upon its own motion, hold a hearing
13 to determine whether a subject ordered by the board to receive
14 outpatient treatment can be adequately and safely served by the
15 individualized treatment plan for such subject on file with the
16 board. The mental health board may issue a warrant directing any
17 law enforcement officer in the state to take custody of the subject
18 and directing the sheriff or other suitable person to transport
19 the subject to a treatment facility or public or private hospital
20 with available capacity specified by the board where he or she
21 will be held pending such hearing. No person may be held in
22 custody under this section for more than seven days except upon
23 a continuance granted by the board. At the time of execution of
24 the warrant, the sheriff or other suitable person designated by
25 the board shall personally serve upon the subject, the subject's

1 counsel, and the subject's legal guardian or conservator, if any,
2 a notice of the time and place fixed for the hearing, a copy of
3 the motion for hearing, and a list of the rights provided by the
4 Sex Offender Commitment Act. The subject shall be accorded all the
5 rights guaranteed to a subject by the act. Following the hearing,
6 the board shall determine whether outpatient treatment will be
7 continued, modified, or ended.

8 Sec. 75. (1) Upon the filing of a periodic report under
9 section 72 of this act, the subject, the subject's counsel, or the
10 subject's legal guardian or conservator, if any, may request and
11 shall be entitled to a review hearing by the mental health board
12 and to seek from the board an order of discharge from commitment or
13 a change in treatment ordered by the board. The mental health board
14 shall schedule the review hearing no later than fourteen calendar
15 days after receipt of such request. The mental health board may
16 schedule a review hearing (a) at any time pursuant to section 77 or
17 78 of this act, (b) upon the request of the subject, the subject's
18 counsel, the subject's legal guardian or conservator, if any, the
19 county attorney, the official, agency, or other person or entity
20 designated by the mental health board under section 71 of this act
21 to prepare and oversee the subject's individualized treatment plan,
22 or the mental health professional directly involved in implementing
23 such plan, or (c) upon the board's own motion.

24 (2) The board shall immediately discharge the subject or
25 enter a new treatment order with respect to the subject whenever

1 it is shown by any person or it appears upon the record of
2 the periodic reports filed under section 72 of this act to the
3 satisfaction of the board that (a) the subject's mental illness
4 or personality disorder has been successfully treated or managed
5 to the extent that the subject no longer poses a threat to the
6 public or (b) a less restrictive treatment alternative exists for
7 the subject which does not increase the risk that the subject
8 will commit another sex offense. When discharge or a change in
9 disposition is in issue, due process protections afforded under the
10 Sex Offender Commitment Act shall attach to the subject.

11 Sec. 76. When the administrator of any regional center
12 or treatment facility for the treatment of dangerous sex offenders
13 determines that any involuntary patient in such facility may be
14 safely and properly discharged or placed on convalescent leave, the
15 administrator of such regional center or treatment facility shall
16 immediately notify the mental health board of the judicial district
17 from which such patient was committed.

18 Sec. 77. A mental health board shall be notified in
19 writing of the release by the treatment facility of any individual
20 committed by the mental health board. Such notice shall immediately
21 be forwarded to the county attorney. The mental health board shall,
22 upon the motion of the county attorney, or may upon its own
23 motion, conduct a hearing to determine whether the individual is
24 a dangerous sex offender and consequently not a proper subject
25 for release. Such hearing shall be conducted in accordance with

1 the procedures established for hearings under the Sex Offender
2 Commitment Act. The subject of such hearing shall be accorded all
3 rights guaranteed to the subject of a petition under the act.

4 Sec. 78. The mental health board shall, upon the motion
5 of the county attorney, or may upon its own motion, hold a hearing
6 to determine whether a person who has been ordered by the board
7 to receive inpatient or outpatient treatment is adhering to the
8 conditions of his or her release from such treatment, including
9 the taking of medication. The subject of such hearing shall be
10 accorded all rights guaranteed to a subject under the Sex Offender
11 Commitment Act, and such hearing shall apply the standards used
12 in all other hearings held pursuant to the act. If the mental
13 health board concludes from the evidence at the hearing that
14 there is clear and convincing evidence that the subject is a
15 dangerous sex offender, the board shall so find and shall within
16 forty-eight hours enter an order of final disposition providing for
17 the treatment of such person in accordance with section 65 of this
18 act.

19 Sec. 79. When any person receiving treatment at a
20 treatment facility or program for dangerous sex offenders pursuant
21 to an order of a court or mental health board is absent
22 without authorization from such treatment facility or program,
23 the administrator or program director of such treatment facility
24 or program shall immediately notify the Nebraska State Patrol and
25 the court or clerk of the mental health board of the judicial

1 district from which such person was committed. The notification
2 shall include the person's name and description and a determination
3 by a psychiatrist, clinical director, administrator, or program
4 director as to whether the person is believed to be currently
5 dangerous to others. The clerk shall issue the warrant of the board
6 directed to the sheriff of the county for the arrest and detention
7 of such person. Such warrant may be executed by the sheriff or
8 any other peace officer. Pending the issuance of the warrant of
9 the mental health board, any peace officer may seize and detain
10 such person when the peace officer has probable cause to believe
11 that the person is reported to be absent without authorization as
12 described in the section. Such person shall be returned to the
13 treatment facility or program or shall be taken to a facility as
14 described in section 71-919 until he or she can be returned to such
15 treatment facility or program.

16 Sec. 80. In addition to the rights granted subjects by
17 any other provisions of the Sex Offender Commitment Act, such
18 subjects shall be entitled to the rights provided in sections
19 71-943 to 71-960 during proceedings concerning the subjects under
20 the act.

21 Sec. 81. All mental health board hearings under the Sex
22 Offender Commitment Act shall be closed to the public except at
23 the request of the subject and shall be held in a courtroom or at
24 any convenient and suitable place designated by the mental health
25 board. The board shall have the right to conduct the proceeding

1 where the subject is currently residing if the subject is unable to
2 travel.

3 Sec. 82. The rules of evidence applicable in civil
4 proceedings shall apply at all hearings held under the Sex Offender
5 Commitment Act. In no event shall evidence be considered which is
6 inadmissible in criminal proceedings.

7 Sec. 83. Section 79-267, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 79-267 The following student conduct shall constitute
10 grounds for long-term suspension, expulsion, or mandatory
11 reassignment, subject to the procedural provisions of the Student
12 Discipline Act, when such activity occurs on school grounds, in
13 a vehicle owned, leased, or contracted by a school being used
14 for a school purpose or in a vehicle being driven for a school
15 purpose by a school employee or by his or her designee, or at a
16 school-sponsored activity or athletic event:

17 (1) Use of violence, force, coercion, threat,
18 intimidation, or similar conduct in a manner that constitutes a
19 substantial interference with school purposes;

20 (2) Willfully causing or attempting to cause substantial
21 damage to property, stealing or attempting to steal property of
22 substantial value, or repeated damage or theft involving property;

23 (3) Causing or attempting to cause personal injury to a
24 school employee, to a school volunteer, or to any student. Personal
25 injury caused by accident, self-defense, or other action undertaken

1 on the reasonable belief that it was necessary to protect some
2 other person shall not constitute a violation of this subdivision;

3 (4) Threatening or intimidating any student for the
4 purpose of or with the intent of obtaining money or anything of
5 value from such student;

6 (5) Knowingly possessing, handling, or transmitting any
7 object or material that is ordinarily or generally considered a
8 weapon;

9 (6) Engaging in the unlawful possession, selling,
10 dispensing, or use of a controlled substance or an imitation
11 controlled substance, as defined in section 28-401, a substance
12 represented to be a controlled substance, or alcoholic liquor
13 as defined in section 53-103 or being under the influence of a
14 controlled substance or alcoholic liquor;

15 (7) Public indecency as defined in section 28-806, except
16 that this subdivision shall apply only to students at least twelve
17 years of age but less than nineteen years of age;

18 (8) Sexually assaulting or attempting to sexually assault
19 any person if a complaint has been filed by a prosecutor in a court
20 of competent jurisdiction alleging that the student has sexually
21 assaulted or attempted to sexually assault any person, including
22 sexual assaults or attempted sexual assaults which occur off school
23 grounds not at a school function, activity, or event. For purposes
24 of this subdivision, sexual assault ~~shall mean~~ means sexual assault
25 in the first degree as defined in section 28-319, and sexual

1 assault in the second degree as defined in ~~sections 28-319 and~~
2 section 28-320, sexual assault of a child in the second or third
3 degree as defined in section 28-320.01, or sexual assault of a
4 child in the first degree as defined in section 6 of this act, as
5 such sections now provide or may hereafter from time to time be
6 amended;

7 (9) Engaging in any other activity forbidden by the laws
8 of the State of Nebraska which activity constitutes a danger to
9 other students or interferes with school purposes; or

10 (10) A repeated violation of any rules and standards
11 validly established pursuant to section 79-262 if such violations
12 constitute a substantial interference with school purposes.

13 It is the intent of the Legislature that alternatives to
14 suspension or expulsion be imposed against a student who is truant,
15 tardy, or otherwise absent from required school activities.

16 Sec. 84. Section 80-601, Revised Statutes Cumulative
17 Supplement, 2004, is amended to read:

18 80-601 Whenever in any proceeding under the Nebraska
19 Mental Health Commitment Act or the Sex Offender Commitment Act
20 it is determined that a person is mentally ill and dangerous or
21 a dangerous sex offender as defined in section 87 of this act
22 and it appears that such person is eligible for care or treatment
23 by the United States Department of Veterans Affairs or another
24 agency of the United States Government, the mental health board,
25 upon determination by the department or such other agency that

1 facilities are available and that such person is eligible for care
2 or treatment therein, may commit such person to the department or
3 other agency. Upon commitment, such person shall be subject to the
4 applicable rules and regulations of the department or other agency
5 of the United States operating the institution in which such care
6 or treatment is provided. The chief officer of any facility of
7 the department or institution operated by any other agency of the
8 United States to which a mentally ill and dangerous person or a
9 dangerous sex offender is committed by a proper agency in this
10 state shall have the same powers as chief executive officers of
11 state hospitals for the care of the mentally ill in this state
12 with respect to the custody, transfer, conditional discharge, or
13 discharge of such person.

14 Sec. 85. Section 81-1850, Revised Statutes Cumulative
15 Supplement, 2004, is amended to read:

16 81-1850 (1) Upon request of the victim and at the time of
17 conviction of the offender, the county attorney of the jurisdiction
18 in which a person is convicted of a felony shall forward to
19 the Board of Parole, the Department of Correctional Services,
20 the county corrections agency, or the Department of Health and
21 Human Services the name and address of any victim, as defined in
22 section 29-119, of the convicted person. The board, the Department
23 of Correctional Services, the county corrections agency, or the
24 Department of Health and Human Services shall include the name
25 in the file of the convicted person, but the name shall not be

1 part of the public record of any parole hearings of the convicted
2 person. Any victim, including a victim who has waived his or her
3 right to notification at the time of conviction, may request the
4 notification prescribed in this section, as applicable, by sending
5 a written request to the board, the Department of Correctional
6 Services, the county corrections agency, or the Department of
7 Health and Human Services any time after the convicted person is
8 incarcerated and until the convicted person is no longer under the
9 jurisdiction of the board, the county corrections agency, or the
10 Department of Correctional Services or, if the person is under the
11 jurisdiction of the Department of Health and Human Services, within
12 the three-year period after the convicted person is no longer under
13 the jurisdiction of the board, the county corrections agency, or
14 the Department of Correctional Services.

15 (2) A victim whose name appears in the file of the
16 convicted person shall be notified by the Board of Parole:

17 (a) Within ninety days after conviction of an offender,
18 of the tentative date of release and the earliest parole
19 eligibility date of such offender;

20 (b) Of any parole hearings or proceedings;

21 (c) Of any decision of the Board of Parole;

22 (d) When a convicted person who is on parole is returned
23 to custody because of parole violations; and

24 (e) If the convicted person has been adjudged a mentally
25 disordered sex offender or is a convicted sex offender, when such

1 person is released from custody or treatment.

2 Such notification shall be given in person, by
3 telecommunication, or by mail.

4 (3) A victim whose name appears in the file of
5 the convicted person shall be notified by the Department of
6 Correctional Services or a county corrections agency:

7 (a) When a convicted person is granted a furlough or
8 release from incarceration for twenty-four hours or longer or any
9 transfer of the convicted person to community status;

10 (b) When a convicted person is released into
11 community-based programs, including educational release and work
12 release programs. Such notification shall occur at the beginning
13 and termination of any such program;

14 (c) When a convicted person escapes or does not return
15 from a granted furlough or release and again when the convicted
16 person is returned into custody;

17 (d) When a convicted person is discharged from custody
18 upon completion of his or her sentence. Such notice shall be given
19 at least thirty days before discharge, when practicable;

20 (e) Of the (i) department's calculation of the earliest
21 parole eligibility date of the prisoner with all potential good
22 time or disciplinary credits considered if the sentence exceeds
23 ninety days or (ii) county corrections agency's calculation of
24 the earliest release date of the prisoner. The victim may request
25 one notice of the calculation described in this subdivision. Such

1 information shall be mailed not later than thirty days after
2 receipt of the request;

3 (f) Of any reduction in the prisoner's minimum sentence;
4 and

5 (g) Of the victim's right to submit a statement as
6 provided in section 81-1848.

7 (4) A victim whose name appears in the file of a
8 convicted person shall be notified by the Department of Health and
9 Human Services:

10 (a) When a person convicted of an offense listed in
11 subsection (5) of this section becomes the subject of a ~~mental~~
12 ~~health~~ petition pursuant to the Nebraska Mental Health Commitment
13 Act or the Sex Offender Commitment Act prior to his or her
14 discharge from custody upon the completion of his or her sentence
15 or within thirty days after such discharge. The county attorney
16 who filed the ~~mental health~~ petition shall notify the Department
17 of Correctional Services of such petition. The Department of
18 Correctional Services shall forward the names and addresses of
19 victims appearing in the file of the convicted person to the
20 Department of Health and Human Services;

21 (b) When a person under a mental health board commitment
22 pursuant to subdivision (a) of this subsection escapes from an
23 inpatient facility providing board-ordered treatment and again when
24 the person is returned to an inpatient facility;

25 (c) When a person under a mental health board commitment

1 pursuant to subdivision (a) of this subsection is discharged or has
2 a change in disposition from inpatient board-ordered treatment;

3 (d) When a person under a mental health board commitment
4 pursuant to subdivision (a) of this subsection is granted a
5 furlough or release for twenty-four hours or longer; and

6 (e) When a person under a mental health board commitment
7 pursuant to subdivision (a) of this subsection is released
8 into educational release programs or work release programs. Such
9 notification shall occur at the beginning and termination of any
10 such program.

11 (5) Subsection (4) of this section applies to persons
12 convicted of at least one of the following offenses which is also
13 alleged to be the recent act or threat underlying the commitment
14 of such persons as mentally ill and dangerous or as dangerous sex
15 offenders as defined in section 87 of this act:

16 (a) Murder in the first degree pursuant to section
17 28-303;

18 (b) Murder in the second degree pursuant to section
19 28-304;

20 (c) Kidnapping pursuant to section 28-313;

21 (d) Assault in the first degree pursuant to section
22 28-308;

23 (e) Assault in the second degree pursuant to section
24 28-309;

25 (f) Sexual assault in the first degree pursuant to

1 section 28-319;

2 (g) Sexual assault in the second degree pursuant to
3 section 28-320;

4 (h) Sexual assault of a child in the first degree
5 pursuant to section 6 of this act;

6 ~~(h)~~ (i) Sexual assault of a child in the second or third
7 degree pursuant to section 28-320.01;

8 ~~(i)~~ (j) Stalking pursuant to section 28-311.03; or

9 ~~(j)~~ (k) An attempt, solicitation, or conspiracy to commit
10 an offense listed in subdivisions (a) through (j) of this
11 subsection.

12 (6) A victim whose name appears in the file of a
13 convicted person shall be notified by the Board of Pardons:

14 (a) Of any pardon or commutation proceedings; and

15 (b) If a pardon or commutation has been granted.

16 (7) The Board of Parole, the Department of Correctional
17 Services, the Department of Health and Human Services, and the
18 Board of Pardons shall adopt and promulgate rules and regulations
19 as needed to carry out this section.

20 (8) The victim's address and telephone number maintained
21 by the Department of Correctional Services, the Department of
22 Health and Human Services, the county corrections agency, or the
23 Board of Parole pursuant to subsection (1) of this section shall
24 be exempt from disclosure under public records laws and federal
25 freedom of information laws, as such laws existed on January 1,

1 2004.

2 Sec. 86. (1) At least ninety days prior to the release
3 from incarceration or civil commitment or the termination of
4 probation or parole supervision of an individual who is required
5 to register under section 29-4003, the agency with jurisdiction
6 over the individual shall provide notice to the Attorney General,
7 the Nebraska State Patrol, the prosecuting county attorney, and
8 the county attorney in the county in which an individual is
9 incarcerated, supervised, or committed.

10 (2) The Board of Parole shall also provide notice to
11 the Attorney General, the Nebraska State Patrol, the prosecuting
12 county attorney, and the county attorney in the county in which
13 such individual is incarcerated or committed within five days after
14 scheduling a parole hearing for an individual who is required to
15 register under section 29-4003.

16 (3) A county attorney shall, no later than forty-five
17 days after receiving notice of the pending release of an individual
18 pursuant to this section, notify the Attorney General whether the
19 county attorney intends to initiate civil commitment proceedings
20 against such individual upon his or her release from custody.

21 Sec. 87. For purposes of sections 86 to 91 of this act:

22 (1) Dangerous sex offender means (a) a person who suffers
23 from a mental illness which makes the person likely to engage
24 in repeat acts of sexual violence, who has been convicted of one
25 or more sex offenses, and who is substantially unable to control

1 his or her criminal behavior or (b) a person with a personality
2 disorder which makes the person likely to engage in repeat acts
3 of sexual violence, who has been convicted of two or more sex
4 offenses, and who is substantially unable to control his or her
5 criminal behavior;

6 (2) Likely to engage in repeat acts of sexual violence
7 means the person's propensity to commit sex offenses resulting in
8 serious harm to others is of such a degree as to pose a menace to
9 the health and safety of the public;

10 (3) Person who suffers from a mental illness means an
11 individual who has a mental illness as defined in section 71-907;

12 (4) Person with a personality disorder means an
13 individual diagnosed with a personality disorder;

14 (5) Sex offense means any of the offenses listed in
15 section 29-4003 for which registration as a sex offender is
16 required; and

17 (6) Substantially unable to control his or her criminal
18 behavior means having serious difficulty in controlling or
19 resisting the desire or urge to commit sex offenses.

20 Sec. 88. (1) The Department of Correctional Services
21 shall order an evaluation of the following individuals by a mental
22 health professional to determine whether or not the individual is a
23 dangerous sex offender:

24 (a) Individuals who have been convicted of (i) sexual
25 assault of a child in the first degree pursuant to section 6 of

1 this act or (ii) sexual assault in the first degree pursuant to
2 section 28-319;

3 (b) Individuals who have been convicted of two or more
4 offenses requiring registration as a sex offender under section
5 29-4003 if one of the convictions was for any of the following
6 offenses: (i) Kidnapping of a minor pursuant to section 28-313,
7 except when the person is the parent of the minor and was not
8 convicted of any other offense; (ii) sexual assault in the first
9 degree pursuant to section 28-319 or sexual assault in the second
10 degree pursuant to section 28-320; (iii) sexual assault of a
11 child pursuant to section 28-320.01; (iv) sexual assault of a
12 child in the first degree pursuant to section 6 of this act; (v)
13 sexual assault of a child in the second or third degree pursuant
14 to section 28-320.01; (vi) sexual assault of a vulnerable adult
15 pursuant to subdivision (1)(c) of section 28-386; (vii) incest
16 of a minor pursuant to section 28-703; (viii) visual depiction
17 of sexually explicit conduct of a child pursuant to section
18 28-1463.03; or (ix) any offense that is substantially equivalent
19 to an offense listed in this section by any state, territory,
20 commonwealth, or other jurisdiction of the United States, by the
21 United States Government, or by court-martial or other military
22 tribunal, notwithstanding a procedure comparable in effect to that
23 described in section 29-2264 or any other procedure to nullify a
24 conviction other than by pardon;

25 (c) Individuals convicted of a sex offense against a

1 minor who have refused to participate in or failed to successfully
2 complete the sex offender treatment program offered by the
3 Department of Correctional Services or the Department of Health
4 and Human Services during the term of incarceration. The failure to
5 successfully complete a treatment program due to time constraints
6 or the unavailability of treatment programming shall not constitute
7 a refusal to participate in treatment; and

8 (d) Individuals convicted of failure to comply with the
9 registration requirements of the Sex Offender Registration Act who
10 have previously been convicted for failure to comply with the
11 registration requirements of the act or a similar registration
12 requirement in another state.

13 (2) The evaluation required by this section shall be
14 ordered at least one hundred eighty days before the scheduled
15 release of the individual. Upon completion of the evaluation, and
16 not later than one hundred fifty days prior to the scheduled
17 release of the individual, the department shall send written
18 notice to the Attorney General, the county attorney of the county
19 where the offender is incarcerated, and the prosecuting county
20 attorney. The notice shall contain an affidavit of the mental
21 health professional describing his or her findings with respect to
22 whether or not the individual is a dangerous sex offender.

23 Sec. 89. (1) Any individual who, on or after the
24 effective date of this act, (a) is convicted of or completes
25 a term of incarceration for an offense requiring registration under

1 section 29-4003 and has a previous conviction for a registerable
2 offense, (b) is convicted of sexual assault of a child in the
3 first degree pursuant to section 6 of this act, or (c) is convicted
4 of or completes a term of incarceration for an aggravated offense
5 as defined in section 29-4005, shall, upon completion of his or
6 her term of incarceration or release from civil commitment, be
7 supervised in the community by the Office of Parole Administration
8 for the remainder of his or her life.

9 (2) Notice shall be provided to the Office of Parole
10 Administration by an agency or political subdivision which has
11 custody of an individual required to be supervised in the community
12 pursuant to subsection (1) of this section at least sixty days
13 prior to the release of such individual from custody.

14 (3) Individuals required to be supervised in the
15 community pursuant to subsection (1) of this section shall
16 undergo a risk assessment and evaluation by the Office of Parole
17 Administration to determine the conditions of community supervision
18 to be imposed to best protect the public from the risk that the
19 individual will reoffend.

20 (4) Conditions of community supervision imposed on an
21 individual by the Office of Parole Administration may include the
22 following:

23 (a) Drug and alcohol testing if the conviction resulting
24 in the imposition of community supervision involved the use of
25 drugs or alcohol;

1 (b) Restrictions on employment and leisure activities
2 necessary to minimize interaction with potential victims;

3 (c) Requirements to report regularly to the individual's
4 community supervision officer;

5 (d) Requirements to reside at a specified location and
6 notify the individual's community supervision officer of any change
7 in address or employment;

8 (e) A requirement to allow the Office of Parole
9 Administration access to medical records from the individual's
10 current and former providers of treatment;

11 (f) A requirement that the individual submit himself or
12 herself to available medical, psychological, psychiatric, or other
13 treatment, including, but not limited to, polygraph examinations;
14 or

15 (g) Any other conditions designed to minimize the risk of
16 recidivism, including, but not limited to, the use of electronic
17 monitoring, which are not unduly restrictive.

18 Sec. 90. An individual who violates one or more of the
19 conditions of community supervision established for him or her
20 pursuant to section 89 of this act shall undergo a review by the
21 Office of Parole Administration to evaluate the risk posed to the
22 public by the violation in question. The office may take any of
23 the following actions in response to a violation of conditions of
24 community supervision:

25 (1) Revise or impose additional conditions of community

1 supervision in order to minimize the risk to the public from the
2 continued presence of the individual in the community;

3 (2) Forward to the Attorney General or the county
4 attorney in the county where the individual resides a request
5 to initiate a criminal prosecution for failure to comply with the
6 terms of community supervision; or

7 (3) Forward to the county attorney or Attorney General a
8 recommendation that civil commitment proceedings be instituted with
9 respect to the individual.

10 Sec. 91. Failure to comply with the conditions
11 of community supervision imposed by the Office of Parole
12 Administration is a Class IV felony for the first offense and a
13 Class III felony for any subsequent offense.

14 Sec. 92. Section 83-1,100, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 83-1,100 There is hereby created within the department
17 the Office of Parole Administration. The office shall consist of
18 the Parole Administrator, the field parole service, and all other
19 office staff. The office shall be responsible for the following:

20 (1) The administration of parole services in the
21 community;

22 (2) The maintenance of all records and files associated
23 with the Board of Parole; and

24 (3) The daily supervision and training of staff members
25 of the office; and -

1 (4) The assessment, evaluation, and supervision of
2 individuals who are subject to lifetime community supervision
3 pursuant to section 89 of this act.

4 Nothing in this section shall be construed to prohibit
5 the office from maintaining daily records and files associated with
6 the Board of Pardons.

7 Sec. 93. Section 83-1,102, Revised Statutes Supplement,
8 2005, is amended to read:

9 83-1,102 The Parole Administrator shall:

10 (1) Supervise and administer the Office of Parole
11 Administration;

12 (2) Establish and maintain policies, standards, and
13 procedures for the field parole service and the community
14 supervision of sex offenders pursuant to section 89 of this act;

15 (3) Divide the state into parole districts and appoint
16 district parole officers, deputy parole officers, if required, and
17 such other employees as may be required to carry out adequate
18 parole supervision of all parolees, adequate probation supervision
19 of probationers as ordered by district judges, prescribe their
20 powers and duties, and obtain office quarters for staff in each
21 district as may be necessary;

22 (4) Cooperate with the Board of Parole, the courts, the
23 Community Corrections Council, and all other agencies, public and
24 private, which are concerned with the treatment or welfare of
25 persons on parole;

1 (5) Provide the Board of Parole and district judges with
2 any record of a parolee or probationer which it may require;

3 (6) Make recommendations to the Board of Parole or
4 district judge in cases of violation of the conditions of parole
5 or probation, issue warrants for the arrest of parole or probation
6 violators when so instructed by the board or district judge, notify
7 the Director of Correctional Services of determinations made by the
8 board, and upon instruction of the board, issue certificates of
9 parole and of parole revocation to the facilities and certificates
10 of discharge from parole to parolees;

11 (7) Organize and conduct training programs for the
12 district parole officers and other employees;

13 (8) In consultation with the Community Corrections
14 Council, use the funds provided under section 83-1,107.02
15 to augment operational or personnel costs associated with
16 the development, implementation, and evaluation of enhanced
17 parole-based programs and purchase services to provide such
18 programs aimed at enhancing adult parolee supervision in
19 the community and treatment needs of parolees. Such enhanced
20 parole-based programs include, but are not limited to, specialized
21 units of supervision, related equipment purchases and training,
22 and programs developed by or through the council that address a
23 parolee's vocational, educational, mental health, behavioral, or
24 substance abuse treatment needs;

25 (9) Ensure that any risk or needs assessment instrument

1 utilized by the system be periodically validated; and

2 (10) Exercise all powers and perform all duties necessary
3 and proper in carrying out his or her responsibilities.

4 Sec. 94. Section 83-1,103, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 83-1,103 The field parole service, consisting of district
7 parole officers and deputy parole officers working under the
8 direction of the Parole Administrator or district judge, shall
9 be responsible for the investigation, supervision, and assistance
10 of parolees, ~~or~~ probationers, or individuals subject to community
11 supervision under section 89 of this act. The field parole service
12 shall be sufficient in size to assure that no district parole
13 officer carries a case load larger than is compatible with adequate
14 parole investigation or supervision.

15 Sec. 95. A parole officer assigned by the administrator
16 to supervise individuals subject to lifetime community supervision
17 pursuant to section 89 of this act shall:

18 (1) Make investigations, prior to an individual subject
19 to community supervision being released from incarceration, in
20 cooperation with institutional caseworkers at prisons, mental
21 health facilities, and county jails, to determine the community
22 supervision conditions necessary to protect the public and make
23 reasonable advance preparation for release into the community;

24 (2) Assist individuals subject to community supervision
25 to comply with the conditions of supervision and to make a

1 successful adjustment in the community;

2 (3) Supervise individuals subject to community
3 supervision by keeping informed of their conduct and condition;

4 (4) Make reports as required by the administrator to
5 determine the effectiveness of community supervision in protecting
6 the public or the progress of an individual subject to community
7 supervision;

8 (5) Cooperate with social welfare agencies and treatment
9 providers to ensure that individuals subject to community
10 supervision receive any necessary services or treatment;

11 (6) Inform the administrator when, in the opinion of the
12 community supervision officer, an individual is in violation of
13 the conditions of his or her community supervision, and whenever
14 necessary exercise the power of arrest as provided in section
15 83-1,102;

16 (7) Conduct periodic reviews of the conditions of
17 community supervision imposed on an individual as required by the
18 administrator; and

19 (8) Exercise all powers and perform all duties necessary
20 and proper in carrying out his or her responsibilities.

21 Sec. 96. (1) Prior to the release from incarceration of
22 an individual subject to lifetime community supervision pursuant to
23 section 89 of this act, the Office of Parole Administration shall:

24 (a) Notify the individual in writing that he or she is
25 subject to community supervision upon completion of his or her

1 criminal sentence;

2 (b) Inform the individual subject to community
3 supervision of the process by which conditions of community
4 supervision are determined and his or her right to submit relevant
5 information to the office for consideration when establishing the
6 conditions of supervision;

7 (c) Determine the individual's risk of recidivism if
8 released into the community, utilizing a validated risk assessment
9 tool;

10 (d) After considering the information required in
11 subdivision (e) of this subsection, determine the conditions of
12 supervision which will most effectively minimize the risk of the
13 individual committing another sex offense. The conditions shall be
14 the least restrictive conditions available, in terms of the effect
15 on the individual's personal freedom, which minimize the risk of
16 recidivism and are compatible with public safety; and

17 (e) In determining the conditions of supervision to be
18 imposed, the office shall consider the following:

19 (i) A report prepared by the institutional caseworkers
20 relating to the individual's personality, social history, and
21 adjustment to authority and including any recommendations which the
22 staff of the facility may make;

23 (ii) All official reports of the individual's prior
24 criminal record, including reports and records of earlier probation
25 and parole experiences;

- 1 (iii) The presentence investigation report;
2 (iv) The reports of any physical, mental, and psychiatric
3 examinations of the individual;
4 (v) Any relevant information which may be submitted by
5 the individual, his or her attorney, the victim of the crime, or
6 other persons; and
7 (vi) Such other relevant information concerning the
8 individual as may be reasonably available.

9 (2) Upon completion of the risk assessment and the
10 determination of the conditions of community supervision and no
11 later than thirty days prior to the completion of the individual's
12 criminal sentence, the Office of Parole Administration shall issue
13 a certificate of community supervision to the individual containing
14 the conditions of community supervision he or she will be required
15 to comply with upon the completion of his or her criminal
16 sentence. The administrator shall include with the certificate
17 written information on how to appeal the determination of the
18 conditions of community supervision.

19 Sec. 97. The Office of Parole Administration shall review
20 the conditions of community supervision imposed on an individual
21 pursuant to section 89 of this act on an annual basis and shall
22 provide the individual the opportunity to submit written materials
23 to the office for consideration during such review.

24 If the office determines, after reviewing the
25 individual's conduct while under supervision and any other relevant

1 facts, that one or more of the conditions of community supervision
2 imposed upon the individual is no longer necessary to reduce the
3 risk of the individual reoffending or is no longer the least
4 restrictive condition compatible with public safety, the office
5 shall revise the conditions of community supervision so that the
6 individual's freedom is not unnecessarily restricted.

7 Sec. 98. (1) Whenever a determination or revision of the
8 conditions of community supervision is made by the Office of Parole
9 Administration, the individual subject to the conditions shall be
10 entitled to an appeal. The appeal shall be heard by the district
11 court in the county where the individual resides. The individual
12 shall be informed of his or her right to request counsel, and if
13 counsel is requested the court shall determine if the individual
14 is indigent. If the court finds the individual to be indigent,
15 it shall appoint counsel from the public defender's office to
16 represent the individual during the appeal.

17 (2) In an appeal contesting the determination or revision
18 of the conditions of community supervision, the burden of proof
19 shall be on the individual subject to community supervision to
20 show by clear and convincing evidence (a) that the conditions in
21 question will not reduce the risk of the individual reoffending or
22 otherwise protect the public or (b) that the condition is overly
23 restrictive of the individual's freedom and a less restrictive
24 condition is available which is equally or more effective in
25 reducing the risk of the individual reoffending.

1 Sec. 99. Section 83-1,135, Revised Statutes Supplement,
2 2005, is amended to read:

3 83-1,135 Sections 83-170 to 83-1,135 and sections 86 to
4 91 and 95 to 98 of this act shall be known and may be cited as the
5 Nebraska Treatment and Corrections Act.

6 Sec. 100. Section 83-338, Revised Statutes Cumulative
7 Supplement, 2004, is amended to read:

8 83-338 If at any time it becomes necessary, for lack
9 of capacity or other cause, to establish priorities for the
10 admission of patients into the state hospitals for the mentally
11 ill, the following priorities for admission shall be recognized:

12 (1) Patients whose care in the state hospital is necessary in order
13 to protect the public health and safety; (2) patients committed by
14 a mental health board under the Nebraska Mental Health Commitment
15 Act or the Sex Offender Commitment Act or by a district court;

16 (3) patients who are most likely to be benefited by treatment
17 in the state hospitals, regardless of whether such patients are
18 committed by a mental health board or whether such patients seek
19 voluntary admission to one of the state hospitals; and (4) when
20 cases are equally meritorious, in all other respects, patients who
21 are indigent.

22 Sec. 101. Section 83-351, Revised Statutes Cumulative
23 Supplement, 2004, is amended to read:

24 83-351 Expenses incurred by one county, on account of
25 a mentally ill and dangerous person or a dangerous sex offender

1 as defined in section 87 of this act whose legal settlement is
2 in another county of the state, shall be refunded, with lawful
3 interest thereon, by the county in which the ~~patient~~ mentally ill
4 and dangerous person or dangerous sex offender has his or her legal
5 settlement. Such expenses shall be presented to the county board
6 of the county sought to be charged, which shall allow and pay them
7 the same as other claims. Whenever a patient of any facility over
8 which the Department of Health and Human Services has control has
9 been adjudicated a mentally ill and dangerous person or a dangerous
10 sex offender as defined in section 87 of this act and committed
11 to a state hospital for the mentally ill, and the expenses of
12 the adjudication and commitment have been paid by the county in
13 which the institution is located, the county clerk of that county
14 shall certify the total amount of the expenses thus incurred to
15 the Department of Health and Human Services. The department shall
16 audit the expenses so certified and shall file a statement of the
17 amount found due with the Director of Administrative Services, and
18 a warrant shall be drawn on the General Fund in favor of the
19 county from which the ~~patient~~ mentally ill and dangerous person or
20 dangerous sex offender was committed.

21 Sec. 102. Section 83-364, Revised Statutes Cumulative
22 Supplement, 2004, is amended to read:

23 83-364 When any person is admitted to a state institution
24 or other inpatient treatment facility pursuant to an order of a
25 mental health board under the Nebraska Mental Health Commitment

1 Act or the Sex Offender Commitment Act or receives treatment
2 prescribed by such institution or facility following release or
3 without being admitted as a resident patient, the patient and his
4 or her relatives shall be liable for the cost of the care, support,
5 maintenance, and treatment of such person to the extent and in
6 the manner provided by sections 83-227.01, 83-227.02, 83-350, and
7 83-363 to 83-380. The provisions of such sections also shall apply
8 to persons admitted to a state institution as transferees from any
9 state penal institution or the Youth Rehabilitation and Treatment
10 Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva
11 but only after the expiration of the time for which the transferees
12 were originally sentenced or committed.

13 Sec. 103. Section 83-376, Revised Statutes Cumulative
14 Supplement, 2004, is amended to read:

15 83-376 When the full cost determined to be necessary for
16 the care, support, maintenance, and treatment of any patient is
17 not paid by the patient or his or her relatives within thirty
18 days of receipt of such care, (1) the county in which the patient
19 resides shall pay (a) the first fifteen dollars per day of the
20 unpaid cost for each of the first thirty days at the Hastings
21 Regional Center, the Lincoln Regional Center, the Norfolk Regional
22 Center, or other inpatient treatment facility where the patient
23 is receiving inpatient treatment pursuant to an order of a mental
24 health board under the Nebraska Mental Health Commitment Act or the
25 Sex Offender Commitment Act, (b) the first ten dollars per day of

1 the unpaid cost for each of the first thirty days at the Beatrice
2 State Developmental Center, and (c) the first three dollars per day
3 of the unpaid costs for each day after the first thirty days at
4 any such institution, (2) the balance of the unpaid cost shall be
5 borne by the state, and (3) the county in which the patient resides
6 shall be credited by the Director of Health and Human Services
7 for amounts collected from such patient or his or her relatives in
8 excess of the portion of such costs borne by the state.

9 Sec. 104. Section 83-4,143, Revised Statutes Supplement,
10 2005, is amended to read:

11 83-4,143 (1) It is the intent of the Legislature that
12 the court target the felony offender (a) who is eligible and
13 by virtue of his or her criminogenic needs is suitable to be
14 sentenced to intensive supervision probation with placement at the
15 incarceration work camp, (b) for whom the court finds that other
16 conditions of a sentence of intensive supervision probation, in
17 and of themselves, are not suitable, and (c) who, without the
18 existence of an incarceration work camp, would, in all likelihood,
19 be sentenced to prison.

20 (2) When the court is of the opinion that imprisonment is
21 appropriate, but that a brief and intensive period of regimented,
22 structured, and disciplined programming within a secure facility
23 may better serve the interests of society, the court may place an
24 offender in an incarceration work camp for a period not to exceed
25 one hundred eighty days as a condition of a sentence of intensive

1 supervision probation. The court may consider such placement if the
2 offender (a) is a male or female offender convicted of a felony
3 offense in a district court, (b) is medically and mentally fit
4 to participate, with allowances given for reasonable accommodation
5 as determined by medical and mental health professionals, and (c)
6 has not previously been incarcerated for a violent felony crime.
7 Offenders convicted of a crime under sections 28-319 to 28-321 and
8 section 6 of this act or of any capital crime are not eligible to
9 be placed in an incarceration work camp.

10 Sec. 105. Section 83-933, Revised Statutes Cumulative
11 Supplement, 2004, is amended to read:

12 83-933 The Office of Parole Administration shall be
13 within the Division of Community-Centered Services. Subject to the
14 supervision of the assistant director of the division, the Parole
15 Administrator shall be charged with the administration of parole
16 services in the community pursuant to the provisions of section
17 83-1,102, implementation and administration of the Interstate
18 Compact for Adult Offender Supervision as it affects parolees,
19 community supervision of sex offenders pursuant to section 89 of
20 this act, and supervision of parolees either paroled in Nebraska
21 and supervised in another state or paroled in another state and
22 supervised in Nebraska, pursuant to the compact.

23 Sec. 106. (1) When sentencing a person convicted of an
24 offense which requires lifetime community supervision upon release
25 pursuant to section 89 of this act, the sentencing court shall:

1 (a) Provide written notice to the defendant that he or
2 she shall be subject to lifetime community supervision by the
3 Office of Parole Administration upon release from incarceration or
4 civil commitment. The written notice shall inform the defendant (i)
5 that he or she shall be subject to lifetime community supervision
6 by the office upon release and that the office shall conduct a risk
7 assessment and evaluation to determine the conditions of community
8 supervision which will minimize, in the least restrictive manner
9 that is compatible with public safety, the risk of the defendant
10 committing additional offenses, (ii) that a violation of any of
11 the conditions of community supervision imposed by the office may
12 result in the revision of existing conditions, the addition of
13 new conditions, a recommendation that civil commitment proceedings
14 should be instituted, or criminal prosecution, and (iii) of his
15 or her right to challenge the determination of the conditions of
16 community supervision by the office and the right to a periodic
17 review of the conditions of community supervision pursuant to
18 section 89 of this act to determine if the conditions are still
19 necessary to protect the public;

20 (b) Require the defendant to read and sign a form stating
21 that the duty of the defendant to comply with the conditions
22 of community supervision and his or her rights to challenge the
23 conditions of community supervision imposed by the office has been
24 explained; and

25 (c) Retain a copy of the written notification signed by

1 the defendant.

2 (2) Prior to the release of a person serving a sentence
3 for an offense requiring lifetime community supervision by the
4 Office of Parole Administration pursuant to section 89 of this
5 act, the Department of Correctional Services, the Department of
6 Health and Human Services, or a city or county correctional or jail
7 facility shall:

8 (a) Provide written notice to the person that he or
9 she shall be subject to lifetime community supervision by the
10 office upon release from incarceration. The written notice shall
11 inform the person (i) that he or she shall be subject to lifetime
12 community supervision by the office upon release and that the
13 office shall conduct a risk assessment and evaluation of the
14 defendant to determine the conditions of community supervision
15 which will minimize, in the least restrictive manner that is
16 compatible with public safety, the risk of the person committing
17 additional offenses, (ii) that a violation of any of the conditions
18 of community supervision imposed by the office may result in the
19 revision of existing conditions, the addition of new conditions,
20 a recommendation that civil commitment proceedings should be
21 instituted, or criminal prosecution, and (iii) of his or her
22 right to challenge the determination of the conditions of community
23 supervision by the office and the right to a periodic review of the
24 conditions of community supervision pursuant to section 89 of this
25 act to determine if the conditions are still necessary to protect

1 the public;

2 (b) Require the defendant to read and sign a form stating
3 that the duty of the defendant to comply with the conditions
4 of community supervision and his or her right to challenge the
5 conditions of community supervision imposed by the office has been
6 explained; and

7 (c) Retain a copy of the written notification signed by
8 the person.

9 Sec. 107. In 2001, the Governor's Working Group on
10 the Management and Treatment of Sex Offenders issued its final
11 report making recommendations for legislative and administrative
12 changes in providing services for the management and treatment
13 of sex offenders. It is the intent of the Legislature that
14 those who are responsible for the treatment of sex offenders
15 possess the necessary qualifications and training to provide
16 sex-offender-specific therapy.

17 Sec. 108. (1) The Director of Regulation and Licensure
18 shall establish a working group to study sex offender treatment
19 and management services and recommend improvements. The working
20 group shall include a member of the Legislature appointed by
21 the Executive Board of the Legislative Council and the following
22 persons appointed by the Governor: A representative of the Nebraska
23 Health and Human Services System; a representative of the courts;
24 a representative of the Department of Correctional Services; a
25 representative of the Nebraska Probation System; a representative

1 of the Board of Parole; a representative of law enforcement; a
2 representative of private providers of sex offender treatment;
3 a representative of victim advocates; a licensed psychologist; a
4 licensed alcohol and drug counselor; and a person required to
5 be registered under the Sex Offender Registration Act who is
6 participating in a sex offender treatment program. Other interested
7 persons may be appointed in a nonvoting capacity as needed.

8 (2) The working group shall study sex offender treatment
9 and management on the state level to determine future legislative
10 and executive actions necessary to improve sex offender treatment
11 and management within the State of Nebraska based upon the
12 recommendations of the Governor's Working Group on the Management
13 and Treatment of Sex Offenders report issued in August of 2001,
14 with regard to the following:

15 (a) Credentialing of professionals who provide sex
16 offender assessment or treatment, including psychologists,
17 psychiatrists, licensed mental health professionals, licensed
18 clinical social workers, and medical personnel;

19 (b) Creating mandated treatment standards for
20 sex-offender-specific treatment as a component of a comprehensive
21 approach to sex offender management; and

22 (c) Providing increased training opportunities for all
23 professionals involved in the treatment and management of sex
24 offenders.

25 (3) The Director of Regulation and Licensure, in

1 consultation with the working group, shall submit a report of such
2 study to the Legislature and the Governor on or before December 1,
3 2006. The working group terminates on December 1, 2006.

4 Sec. 109. Original sections 28-319, 29-2028, 29-2221,
5 42-1203, 71-1,206.14, 71-1,206.18, 71-1,206.34, 71-6908, 79-267,
6 83-1,100, and 83-1,103, Reissue Revised Statutes of Nebraska,
7 sections 28-101, 28-111, 28-311, 28-318, 28-320.01, 28-320.02,
8 28-707, 29-119, 29-1926, 29-2290, 29-2923, 29-4001, 29-4005,
9 29-4006, 29-4007, 29-4011, 29-4103, 71-916, 71-917, 71-918, 71-919,
10 71-942, 71-944, 71-945, 71-946, 71-947, 71-948, 71-949, 71-954,
11 71-956, 71-957, 71-958, 71-959, 71-960, 71-961, 71-962, 80-601,
12 81-1850, 83-338, 83-351, 83-364, 83-376, and 83-933, Revised
13 Statutes Cumulative Supplement, 2004, and sections 29-110, 29-4003,
14 29-4004, 29-4009, 29-4013, 71-1128, 83-1,102, 83-1,135, and
15 83-4,143, Revised Statutes Supplement, 2005, are repealed.